Ombudsman Manitoba

Second Annual Report of the OMBUDSMAN

For the period
January 1st, 1989 –
December 31st, 1989

Presented to the Legislature pursuant
to Section 55 of
The Freedom of Information Act

91-01444/

The Honourable Denis Rocan
Speaker of the Legislative Assembly
Province of Manitoba

Dear Mr. Speaker:

In accordance with Section 55 of The Freedom of Information Act, I am pleased to submit the report of the Ombudsman for the calendar year January 1, 1989 to December 31, 1989.

Yours very truly,

Gordon S. Earle

GORDON S. EARLE
OMBUDSMAN

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Introduction

This report is the second Annual Report of the Ombudsman under The Freedom of Information Act. The Freedom of Information Act, although enacted in 1985, was not proclaimed in force until September 30, 1988. The Ombudsman's first Annual Report under the Act covered the time period from September 30, 1988 until December 31, 1988. This report will cover the first full calendar year during which the Ombudsman has served as an avenue of appeal for individuals with complaints under The Freedom of Information Act.

While the three month period in 1988 saw eight formal complaints lodged with the Ombudsman, which would average almost three per month, the twelve month period in 1989 yielded forty-eight complaints, which would average about four per month. Although it may be somewhat inappropriate to make comparisons between a three month period of operation and a twelve month period, nonetheless the averages might suggest a slight increase in the use of the first level of the appeal process available to applicants under The Freedom of Information Act. At the time of writing this report I am unaware of any cases that have gone through the court appeal process.

Statistical Information

Number and Types of Complaints

Although there were forty-eight complaints during the year these were lodged by only twenty individuals. In other words it was not uncommon for some individuals to have more than one complaint under The Freedom of Information Act. Of the twenty individuals using the appeal process one person filed fifteen complaints, another filed nine, four filed two complaints each, and the remaining fourteen filed one complaint each. We see that there were six out of twenty people or 30% of those using the complaint process who had more than one complaint regarding access to information. In chart form the information is as follows:

Number of individuals complaining	Number of complaints per person
1	15
1	9
4	2
14	1
Total of 20 complainants	Total of 48 complaints

In my 1988 Annual Report I outlined the four situations where applicants may wish to launch an appeal under The Freedom of Information Act, namely:

1) where the applicant has not received a reply to an application within the thirty-day response time (a presumed refusal of access);
2) where an applicant has received, and objects to, notice that the government wishes to extend the thirty-day response time;
3) where an applicant has been refused access to all or part of the record applied for; and
4) where an individual has a complaint relating to the adequacy and availability of The Access Guide.

Of the forty-eight complaints received in 1989:

- 8 concerned a presumed refusal of access;
- 11 were contesting extensions to the thirty-day response time; and
- 29 involved the refusal of access to all or part of the records sought.

There were no formal complaints lodged concerning the adequacy and availability of The Access Guide.

Conclusion of 1988 Complaints

There were two complaints carried over in 1989 from the previous year. These were concluded as follows:

NO.	DEPARTMENT/OTHER	COMPLAINT	FDR (Finding; Disposition; Result)
1.	Civil Service Commission	Refused access to records	Not Supported; Report Dismissing Complaint; No Action Required
2.	Corporations & Extra Departmental	Refused access to records	Not Supported; Report Dismissing Complaint; No Action Required

1989 Case Record

NO.	DEPARTMENT/OTHER	COMPLAINT	FDR (Finding; Disposition; Result)
1.	Agriculture	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
2.	Civil Service Commission	Presumed refusal	Supported; Resolved Informally; No Action Required
3.	Civil Service Commission	Refused access	Supported; Resolved Informally; No Action Required
4.	Civil Service Commission	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
5.	Cooperative/Consumer & Corporate Affairs	Refused access	Supported; Resolved Informally; No Action Required
6.	Corporations & Extra Departmental (Manitoba Lotteries Foundation)	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
7.	Corporations & Extra Departmental (Manitoba Lotteries Foundation)	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
8.	Corporations & Extra Departmental (Manitoba Public Insurance Corporation)	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
9.	Corporations & Extra Departmental (Manitoba Public Insurance Corporation)	Refused access	Supported; Resolved Informally, No Action Required
10.	Corporations & Extra Departmental (Manitoba Telephone System)	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
11.	Culture, Heritage & Recreation	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required

NO.	DEPARTMENT/OTHER	COMPLAINT	FDR (Finding; Disposition; Result)
12.	Culture, Heritage & Recreation	Refused access	Not Supported; Resolved Informally; No Action Required
13.	Culture, Heritage & Recreation	Refused access	Pending
14.	Education	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
15.	Education	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
16.	Education	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
17.	Employment Services & Economic Security	Refused access	Not Supported; Resolved Informally; No Action Required
18.	Environment	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
19.	Environment	Refused access	Supported; Resolved Informally; No Action Required
20.	Family Services	Presumed refusal	Supported; Resolved Informally; No Action Required
21.	Family Services	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
22.	Family Services	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
23.	Family Services	Refused access	Not Supported; Resolved Dismissing Complaint; No Action Required
24.	Finance	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required

NO.	DEPARTMENT/OTHER	COMPLAINT	FDR (Finding; Disposition; Result)
25.	Government Services	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
26.	Health	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
27.	Health	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
28.	Health	Refused access	Supported; Report Informally; No Action Required
29.	Health	Refused access	Pending
30.	Highways & Transportation	Refused access	Pending
31.	Hydro	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
32.	Industry, Trade & Tourism	Refused access	Not Supported; Report Dismissing Complaints; No Action Required
33.	Industry, Trade & Tourism	Refused access	Supported; Report with Recommendation; Remedial Action
34.	Industry, Trade & Tourism	Refused access	Pending
35.	Justice	Presumed refusal	Not Supported; Resolved Informally; No Action Required
36.	Justice	Presumed refusal	Supported; Resolved Informally; No Action Required
37.	Justice	Presumed refusal	Not Supported; Resolved Informally; No Action Required
38.	Justice	Presumed refusal	Supported; Resolved Informally; No Action

NO.	DEPARTMENT/OTHER	COMPLAINT	FDR (Finding; Disposition; Result)
39.	Justice	Presumed refusal	Supported; Resolved Informally; No Action Required
40.	Justice	Presumed refusal	Undetermined; Discontinued by Complaint; No Action Required
41.	Labour	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
42.	Labour	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
43.	Labour	Refused access	Not Supported; Resolved Informally; No Action Required
44.	Natural Resources	Contesting extension	Not Supported; Report Dismissing Complaint; No Action Required
45.	Natural Resources	Refused access	Not Supported; Report Dismissing Complaint; No Action Required
46.	Rural Development	Refused access	Not Supported; Report Dismissing Complaints; No Action Required
47.	Rural Development	Refused access	Supported; Report with Recommendation; Remedial Action
48.	Urban Affairs	Refused access	Not Supported; Report Dismissing Complaint; No Action Required

Complaints Attributed to Each Department, Agency or Category

Rank	Department, Agency or Category	Number of Complaints	Percentage of Total (Approximately)
1	Ministry of Justice	6	12.50%
2	Corporations & Extra Departmental	5	10.42%
3	Health	4	8.33%
	Family Services	4	8.33%
4	Labour	3	6.25%
	Education	3	6.25%
	Culture, Heritage & Recreation	3	6.25%
	Industry, Trade & Tourism	3	6.25%
	Civil Service Commission	3	6.25%
5	Environment	2	4.17%
	Natural Resources	2	4.17%
	Rural Development	2	4.17%
6	Agriculture	1	2.08%
	Employment Services & Economic Security	1	2.08%
	Highways and Transportation	1	2.08%
	Hydro	1	2.08%
	Cooperative/Consumer & Corporate Affairs	1	2.08%
	Finance	1	2.08%
	Government Services	1	2.08%
	Urban Affairs	1	2.08%
	TOTAL	48	100.00%

It may be interesting to note that the largest number of complaints was recorded against the Ministry of Justice. The six complaints against that department represented 12.5% of the caseload and it may be significant that all of these complaints involved a presumed refusal of access. A presumed refusal of access is described in section 8 and subsection 11(4) of the Act which reads as follows:

"Failure to respond within 30 days.

8 Where the head of a department does not respond to an application in a manner authorized by this Act within 30 days after the department receives the application, the head shall, for purposes of this Act, be presumed to have refused to give the applicant access to the record.

Failure to respond

11(4) Where on the expiry of an extension under this section the head does not respond to the applicant in a manner authorized by subsection (3), the head shall be presumed to have refused to give the applicant access to the record."

The rest of the caseload was shared by a variety of government departments and agencies, with Corporations & Extra Departmental, Health, and Family Services predominating somewhat.

Sources of Complaints

Darlingford	1
Deloraine	1
Libau	1
Thompson	1
Winnipeg	35
Subtotal	39
Out of Province	
Ontario	9
Subtotal	9
Total	48

Case Summaries

Need to Consult Justifies Extension of Time Limits

89-100-0001-F2 **Manitoba Agriculture**

Complaint:	*Contesting Extension*
Finding:	*Not Supported*
Disposition:	*Report Dismissing Complaint*
Result:	*No Action Required*

Under date of September 22, 1989 an individual filed, against eleven departments, formal complaints in which he contested the fact that each of those departments had extended the thirty day time period for responding to his formal applications for access under The Freedom of Information Act. These extension complaints were received at my office on September 28, 1989 and each was reviewed on its own merits.

Before proceeding to the details of this specific complaint concerning Manitoba Agriculture, I will offer a few comments with respect to the matter of the extension of time limits. These comments are relevant to all complaints concerning extensions.

Under The Freedom of Information Act, the head of a department which receives an application shall within thirty days after the department receives the application respond to the applicant by either agreeing or refusing to give the applicant access. The head of the department may extend this thirty day time limit for up to thirty additional days if in order to process the application the department must:

> *"(a) search for, or examine, such a large number of records that meeting the 30 day limit would unreasonably interfere with the operations of the department; or*
>
> *(b) consult with another office of the department, or with another department, in circumstances that the consultations cannot reasonably be completed within 30 days."*

In order for an extension to take place properly the department extending the thirty day limit must within thirty days after receiving the application send written notice to the applicant advising of the extension and the right of the applicant to file a complaint with the Ombudsman about the extension as well as the right of the applicant to file a complaint with the Ombudsman if forthwith upon the expiry of the extension the department does not properly respond to the application for access. It is important to note that the department can only extend the time limit once, and on the expiry of an extension if the department does not respond to the applicant in a manner authorized by the Act then it is presumed that the department has refused to give the applicant access to the record.

Under The Freedom of Information Act an applicant who receives a notice of extension of the thirty day response time may file a complaint with the Ombudsman and the Ombudsman **shall** receive and investigate every such complaint. The Ombudsman shall, upon completing his investigation, send to the applicant and the department a report containing the findings of the investigation and any recommendations which the Ombudsman considers appropriate. If the Ombudsman completes the investigation of an extension before the additional thirty days has expired, and if the Ombudsman's investigation determines that the thirty day response time ought not to have been extended, then conceivably the Ombudsman's recommendations may include a recommendation that the department lift the extension and respond immediately to the application for access. However, if the Ombudsman's investigation of an extension is not completed until after the extended time period has expired, then obviously the Ombudsman's recommendations, if any, would have to focus upon the prevention of unwarranted extensions in the future.

In the case of the eleven extension complaints which the complainant made to our office these were all made after the thirty day extension periods were well in progress and our investigations of these complaints were not completed before the expiration of the extension time periods. Our reports on these complaints therefore focused on whether extensions were made in accordance with the Act and whether, in my opinion, such extensions should have been made. It was obvious that any action resulting from our investigations could not alter what had taken place, but rather would center around what considerations should take place in future cases.

Looking now specifically to the extension by Manitoba Agriculture our investigation revealed that the formal application for access, dated August 8, 1989 was received by Manitoba Agriculture on August 11, 1989. This application requested information relating to the use of Manitoba Data Services (MDS) by that department its boards, agencies and commissions. Also the applicant was requesting the total expenditures by the department and its boards, agencies and commissions for services provided by MDS in the last available fiscal year.

Information we received from Manitoba Agriculture indicated that the Department was aware that other departments were receiving a similar request. Reportedly, Manitoba Agriculture consulted with several departments seeking advice on whether an over all coordinated government response was being initiated. Shortly thereafter the Department received an August 18, 1989 memorandum from the President and General Manager of Manitoba Data Services indicating that releasing the requested information would damage the Province's bargaining position during a negotiating period involving the possible divestiture of MDS. The memorandum advised that the requested information relating to Manitoba Data Services be denied.

Our investigation revealed that Manitoba Agriculture then contacted an official of Government Records for advice as to whether a consolidated legal opinion was forthcoming to all departments which received the same Freedom of Information request. Reportedly, this official advised in the affirmative and also indicated that the Manitoba Department of Finance would be forwarding a memorandum to all departments on this matter. Subsequently in a memorandum dated September 7, 1989 the Government Records official asked all departments not to release the information requested, pending provision of additional information in a memorandum from the Deputy Minister of Finance — information which may assist departments in determining whether exemptions to access apply. The official reportedly indicated that this memorandum would not likely be forthcoming before September 12, 1989.

Manitoba Agriculture advised us that the expiry date for responding to the application for access was September 9, 1989 — three days prior to the September 12 earliest date that the Deputy Minister of Finance was to have provided departments with the memorandum mentioned by the Government Records official. Therefore, Manitoba Agriculture, under subsection 11(1)(c) of the Act mailed a notice dated September 7, 1989 to the applicant indicating that an extension of up to a maximum of 30 additional days was necessary to consult with another department. Manitoba Agriculture indicated to us that the Government Records official advised all departments to utilize this extension if their respective statutory response deadlines preceded the September 12 date. We were advised that Manitoba Agriculture did not receive the expected memorandum from the Deputy Minister of Finance until September 13, 1989.

After careful consideration of the question of an extension of the thirty day response time, I was satisfied that in light of the concerns presented directly to the Department by external parties (i.e. Manitoba Data Services and Government Records) it was reasonable and appropriate for Manitoba Agriculture to extend the response time in order to consult and give further deliberation to the question of releasing the information requested. It appeared that appropriate consultation could not have taken place within the thirty day response time particularly since supposedly relevant information from the Deputy Minister of Finance would not be received until three days after the expiry date for responding to the application.

The Freedom of Information Act does allow for consultation to take place between offices or departments and an extension to the thirty day response time can be granted under the Act if in the circumstances the consultations cannot reasonably be completed within thirty days. I believe that under the particular circumstances in this case and because of the manner in which the need for consultation arose it can be said that the required consultation could not reasonably have taken place without an extension to the time limit. Therefore, I did not make any recommendation concerning this particular complaint, and our file was closed accordingly.

An Informal Resolution to An Access Problem

89-130-0001-F3 **Manitoba Civil Service Commission**

Complaint:	*Refused Access*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

On September 28, 1989 our office received a formal complaint under The Freedom of Information Act against the Manitoba Civil Service Commission. The individual who filed this complaint was the same individual who filed similar complaints against several other departments and agencies of government as a result of trying to obtain access to information relating to services provided by Manitoba Data Services (MDS). At the time of the applicant's many requests for access to information concerning Manitoba Data Services, the Government was in the process of negotiations concerning the possible divestiture of Manitoba Data Services.

In this particular case the complainant was complaining that the Civil Service Commission had refused access to the information for which he had applied under date of August 8, 1989. Specifically, he had asked what information and lists of the Manitoba Civil Service Commission are processed or stored at or by Manitoba Data Services. Also, he had asked for the total annual expenditures by the Commission for services provided to it by MDS in the last available fiscal year.

The applicant's request for access to information was received by the Civil Service Commission on August 10, 1989 and, in a letter to him dated August 30, 1989, he was informed that access to the information requested was denied on the grounds that public release of such information could interfere with contractural or other negotiations of Manitoba Data Services and prejudice the competitive position of the Government. Subsections 42(1)(c) and 43(c) of The Freedom of Information Act were cited as the basis of refusal. These subsections read as follows:

> ***"Commercial information belonging to third party.***
> *42(1) Subject to this section, the head of a department shall refuse to give access to any record ...*
>
> *(c) the disclosure of which could reasonably be expect to*
> *(i) result in significant financial loss or gain to a third party, or*
> *(ii) prejudice the competitive position of a third party, or*
> *(iii) interfere with contractual or other negotiations of a third party.*
>
> ***Economic interests in Manitoba.***
> *43 The head of a department may refuse to give access to any record ...*
>
> *(c) the disclosure of which could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government; or ..."*

Our office had reported to the complainant on his similar complaint involving Manitoba Rural Development (summarized in this Annual Report) and because of this he was aware that our office had done an extensive review of matters relating to access to information involving Manitoba Data Services. We explained to our complainant that in addition to the investigations carried out for that particular complaint, we had for the purpose of this complaint obtained and examined the information to which he was denied access by the Manitoba Civil Service Commission. After reviewing the information, it was my opinion that he should have not been refused access to the records in question as I did not feel the information I viewed was sufficiently serious, critical, or sensitive that disclosure could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractural or other negotiations of a department or the government. Through discussions with the Commission's Access Officer an informal resolution to this complaint was reached whereby the Commission decided to release the requested information and, therefore, a formal recommendation from the Ombudsman was not necessary.

We noted from correspondence sent by the Civil Service Commission to the complainant on December 22, 1989 that the complainant had been granted access to the information requested. Whereas, the complaint had been resolved informally our file was closed accordingly. There is no doubt in my mind that the fact a formal recom-

mendation had been made and accepted in the similar Manitoba Rural Development case had a positive effect in bringing about an informal resolution to this complaint and others concerning the refusal of access to information involving Manitoba Data Services.

Slight Delay in Responding, but Refusal in Accordance with Act.

89-130-0002-F1 **Civil Service Commission**

Complaint:	*Presumed Refusal*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

and

89-130-0003-F3 **Civil Service Commission**

Complaint:	*Refused Access*
Finding:	*Not Supported*
Disposition:	*Report Dismissing Complaint*
Result:	*No Action Required*

On November 23, 1989 a complainant filed a formal complaint indicating that he had not received from the Civil Service Commission a reply to his Application for Access, and that it had been 30 days since he had applied. Our review of this matter verified that the complainant had applied on October 23, 1989 for access to copies of any correspondence between the Civil Service Personnel Department and certain individuals concerning reference checks about his work habits.

The application for access was received by the Department of Government Services on October 23, 1989 and was transferred to the Civil Service Commission on October 31, 1989. However, in accordance with the provisions of the Act respecting transfer, the effective date of receipt was October 23, 1989 and the time limit for responding to the application commenced as of that date. According to my calculations, this meant that the 30 day response time expired on November 22, 1989. Whereas the applicant complained to us on November 23, 1989 that he had not at that point received a response to his application, we considered the complaint to be one involving a presumed refusal of access.

A presumed refusal of access exists when a department does not respond to an application in manner authorized by the Act within 30 days after the department receives the application. This was in fact the situation in our complainant's case even though the department missed the deadline by only one day. We learned, as we investigate this matter, that a response to the application had been couriered to the applicant's residence on November 23, 1989, the same day on which he made his complaint to our office. It would appear that the response must have arrived shortly after he had visited our office, personally delivering his complaint.

The response received by the complainant even though one day late, addressed his concern about not receiving a reply to his Application for Access and therefore we closed our file on the presumed refusal of access. However, the response received denied access to the information being sought and therefore the complainant filed another formal complaint with our office against the Civil Service Commission. This complaint was dated November 24, 1989 and was concerning the refusal of access to the records for which he had applied.

We carefully reviewed the complaint concerning the refusal of access to correspondence that existed between the Civil Service Personnel Department and individuals with whom reference checks had been made about our complainant's work habits. In investigating this matter we spoke with the Access Officer at the Civil Service Commission, reviewed the relevant documentation including the information denied, examined the appropriate sections of The Civil Service Act, gave consideration to the relevant sections of The Freedom of Information Act, and had discussions with the complainant concerning this matter.

We noted that in the complainant's Application for Access he had requested access to correspondence concerning reference checks involving five individuals. In the Civil Service Commission's response to the application, it was pointed out that a record of reference checks did not exist and did not appear ever to have been created for three of the five individuals mentioned on the application. The information we reviewed verified that there were records of reference checks for two of the five individuals mentioned on the application.

Although reference checks for two individuals existed, these were treated by the Civil Service Commission as confidential personnel matters and access to the information was denied under subsection 41(1)(c) of The Freedom of Information Act which reads:

> *"41(1) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses ...*
>
> *(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment."*

The Civil Service Commission also denied access to the reference check information under subsection 40(1)(d) of The Freedom of Information Act which reads as follows:

> *"40(1) The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected ...*
>
> *(d) to be injurious to the conduct of existing or anticipated legal proceedings."*

After very careful consideration of all aspects of this matter. I was of the opinion that the information requested was information which had been supplied in confidence to a department by third parties and therefore did fall within the exemption concerning the protection of personal privacy. Consequently, I was unable to make any recommendation on this matter.

While the complainant expressed concern about being able to have adequate information in order to properly prepare for his Civil Service Commission appeal hearing, our investigation of his complaint under The Freedom of Information Act had to be, and was, restricted to whether he had a right of access to the information requested under that Act. In this case, I did not feel that the Civil Service Commission acted improperly by denying access to the information. However, I suggested to the complainant that his upcoming appeal hearing would be the proper forum for him to pursue any concerns he had about the job competition for which he had applied. I further indicated that if he had any concerns after the appeal he may wish to contact our office again, at which time we would determine whether there would be any reason for us to review the matter under The Ombudsman Act. We then closed our file on this complaint, pointing out that should the complainant wish to pursue the matter further, he could appeal the refusal of access to the Court of Queen's Bench by filing an Originating Notice of Motion within thirty (30) days of receiving my report.

A Consumer Wants to Know: Balancing Privacy and Access

89-150-0001-F3 **Manitoba Co-operative, Consumer and Corporate Affairs**

Complaint:	*Refused Access*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

In this particular case an individual had made formal application for access to information concerning how many complaints the Consumer's Bureau had received against a distributing network and to have access to the Department's summary cards and correspondence regarding mediation of these complaints for the past five years.

The Freedom of Information Access Officer for Manitoba Co-operative, Consumer and Corporate Affairs responded to the application by letter and granted partial access to the request by indicating the number of complaints received by the Consumer's Bureau against the company for the last five years. However, as for the rest of the request, that is the summary cards and correspondence regarding mediation of the complaints, the Department denied access indicating that this information falls under the mandatory exemption regarding the unreasonable invasion of privacy of a third party as described in section 41 of The Freedom of Information Act. Section 41 reads, in part, as follows:

> ***"Protection of personal privacy.***
> *41(1) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of*

which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses

(a) personal details of the educational, medical, criminal, employment or family history of the third party; or

(b) personal details of a taxation matter, financial transaction or other pecuniary matter in which the third party is or has been involved; or

(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment."

After some discussion between the applicant and the Access Officer with respect to a possible compromise, involving severing some of the exempted material, the Access Officer in a letter to the applicant re-affirmed the department's position that it could not provide any of the file material. Consequently a formal complaint was made to our office with respect to the refusal of access.

Our review of this matter included meeting with appropriate officials at Manitoba Co-operative, Consumer and Corporate Affairs; a review of the appropriate files and in particular the exempted material; a study of the relevant sections of The Freedom of Information Act; consultation with the Office of the Federal Information Commissioner; a review of some relevant federal court decisions; and discussions with the complainant and the Department in an attempt to obtain an informal resolution to this complaint.

In investigating this case we gave very careful consideration to all aspects of this problem and while I recognized that the Department could certainly make an argument for the protection of personal privacy under section 41 of The Freedom of Information Act, I felt that appropriate severing could allow for both the protection of personal privacy and the access to information. Consequently through discussions with the Department we were able to arrive at an informal resolution to the complaint whereby the complainant would be provided appropriate information to satisfy his access request and that information would be severed in a manner to protect the personal privacy of third parties.

In due course I was informed that our complainant had received access to the information he was seeking. Incidentally the consideration of this complaint by our office and the Department led to the Department adopting new policies to meet the spirit of The Freedom of Information Act and better enable the Department to handle any similar requests for information which it may receive in the future.

While this complaint took much longer to resolve than all would have liked, these were, however, some very important issues to be resolved, one of the most important of these being the delicate balance between the right to privacy and the right to access to information. I feel satisfied that the solution attained in this case satisfied both rights and I am pleased that the department looked beyond this specific complaint to developing a policy which will hopefully assist in dealing with any future cases.

Refused Access to Information Allegedly Released Previously

89-230-0002-F3 **Manitoba Environment and Workplace Safety and Health**

Complaint:	*Refused Access*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

The Freedom of Information Act can be a useful tool for lawyers acting on behalf of their clients. In this case a lawyer, acting on behalf of his client used the Act to apply to Manitoba Environment and Workplace Safety and Health for records which he felt to be germane to a case he was handling. The records pertained to the Department's investigation into indoor air quality at a downtown office.

In response to the application the Department advised that access had been granted except for several paragraphs in a Special Report which were severed. The Department severed this information under subsections 41(1) and 49(b) of The Freedom of Information Act. These subsections relate to the protection of personal privacy and to the potential for physical or psychological harm should disclosure be made. They are as follows:

"Protection of personal privacy.

41(1) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses

(a) personal details of the educational, medical, criminal, employment or family history of the third party; or

(b) personal details of a taxation matter, financial transaction or other pecuniary matter in which the third party is or has been involved; or

(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment."

"Physical or serious psychological harm.

49 The head of a department may refuse to give access to any record where there are reasonably grounds to believe that disclosure of the record might result in

(a) physical or serious psychological harm to the applicant or, in the case of a record which discloses information about a third party, to the third party; or

(b) physical harm to any other person."

It appears that the inspector for the Department, in his inspection report had noted some comments of a personal and private nature concerning third parties and it was this information which the Department had severed on the above mentioned grounds.

The lawyer complained to our office stating that he found it "inconceivable that these sections could be applicable to a file prepared by a Workplace Safety and Health official, dealing with an air quality survey." Our complainant expressed his view that the fact that the Department was seeking to withhold certain information strongly suggested that the official had operated outside his mandate and had taken an adversarial role in the matter.

In investigating this complaint a meeting was held with the Departmental Access Officer and the complete file was reviewed. From our initial review of the severed information contained in the Special Report it was felt that the Department was not unreasonable in considering that the severed information was personal and private and that the disclosure might result in physical or psychological harm to a third party or harm to another person. While we raised some concerns over the appropriateness of including comments that were considered to be personal and private in an inspection report, this factor, in our opinion, did not alter the basis for considering accessibility or exemption under the Act.

Our office telephoned the complainant indicating that our findings tended to support the Department and we advised the complainant that he would be provided with an opportunity to make further representations if he so wished. Subsequently, by letter the lawyer provided our office with information suggesting that the Department may have released the complete unsevered file to another solicitor.

Further inquiries were made with the Department's Access Officer following which we were advised that an exhaustive search had been conducted and the Department was unable to find any records other than those previous released to our complainant. It was noted by the Department that there had been considerable request activity relating to the file during the past few years and it was conceivable there may be records missing from the file. The Department advised that as it did not know what had been released to the other party, it was obliged to fully comply with the provisions of The Freedom of Information Act. The Access Officer noted his wish to extend his apologies to the complainant and to assure him that whatever happened to the missing records was purely inadvertent.

The Access Officer was provided with an opportunity to make further representations, as the Ombudsman now was considering recommending release of the severed information. Following discussion with the Access Officer, the Ombudsman was of the opinion that further inquiries were necessary by the Department regarding the possibility that information to which the complainant was denied access, may have been released previously to another party.

Subsequently, we were advised that following further inquiries by the Department, it was prepared to release the unsevered document. By copy of a letter to the complainant from the Access Officer, we noted that the lawyer was provided the information he had originally requested. Accordingly, as access had been granted, no recommendation was required by the Ombudsman, and our file was closed.

Request for Report on the Security of Departmental Information

89-140-0002-F3 **Manitoba Family Services**

Complaint:	*Refused Access*
Finding:	*Not Supported*
Disposition:	*Report Dismissing Complaint*
Result:	*No Action Required*

A formal application for access under The Freedom of Information Act was presented to Manitoba Family Services requesting information concerning the Security of Departmental Information Review March 1989 and follow-up actions. The Department's Access Officer responded to the applicant by letter denying access under subsection 39(1)(b) of the Act, which reads as follows:

> ***"Policy opinions, advise or recommendations.***
> *39(1) Subject to subsection (4), the head of a department may refuse to give access to any record which discloses ...*
> *(b) a plan relating to the administration of a department, including a plan relating to the management of personnel, which has not yet been implemented;"*

Following the refusal of access the applicant complained to our office as he felt the information he was seeking concerning the security of personal information held by the Department was of public interest. He also felt that the data he was seeking could be severed in a manner to make it accessible.

We carefully reviewed the complaint. Our investigation involved a meeting with the appropriate officials at Manitoba Family Services, a review of the information to which access had been refused, and consideration of this information in light of the provisions of The Freedom of Information Act. As well, the Deputy Ombudsman spoke with our complainant concerning this matter, providing the opportunity for any further representation before the Ombudsman finalized his opinion on the complaint.

After a thorough examination of the complaint, I was satisfied that the Department had applied an appropriate exemption with respect to the information being sought. Access to the material in question would in fact have disclosed information concerning the administration of the Department and plans which had not yet been implemented. Further, from our review of the material we felt that section 40(1) of the Act would be applicable as well in that it would appear that the disclosure of the record could reasonably be expected to threaten the security of a computer or communication system. I reported to the complainant that I was satisfied that the information he had requested was exempt under The Freedom of Information Act and accordingly, I would not be making any recommendation in this matter.

When speaking with my Deputy the complainant had asked if we would review the information to see whether severing was possible. I reviewed the pertinent document in detail and, in my opinion, severing was not appropriate. I closed our file on this matter advising the complainant that if he wished to pursue further the refusal of access he could do so by filing an Originating Notice of Motion to the Court of Queen's Bench within thirty (30) days of receiving my report.

A Lack of Appropriate Communication

89-110-0002-F1 **Manitoba Justice**

Complaint:	*Presumed Refusal*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

An individual complained to our office that he had not received from the Department of Justice, within the required thirty day response time, a reply to his application for access to information under The Freedom of Information Act.

According to Section 8 of The Freedom of Information Act, where the head of a department does not respond to an application in a manner authorized by the Act within 30 days, it is presumed that access has been refused. Therefore pursuant to Subsection 17(1) of the Act I wrote to the Freedom of Information Access Officer for Manitoba Justice requesting that he provide our complainant with written notice of the reason for refusal to give access. Subsection 17(1) reads:

> ***"Reasons for refusal.***
> *17(1) Where a complaint relates to a presumed refusal of access under section 8 or subsection 11(4), the Ombudsman shall, immediately upon beginning the investigation, request the head of the department involved in the complaint to give the applicant written notice of the reasons for the refusal to give access."*

Upon receiving no response to my correspondence to the Access Officer, and also upon learning from the complainant that he also had heard nothing in response to my request to the Access Officer, I had the Deputy Ombudsman make telephone contact with the Access Officer concerning the status of this access request. The Access Officer indicated to my Deputy that he had spoken, at one point by telephone, with our complainant but that generally speaking he was finding it very difficult to get in touch with him. As further explanation for the lack of communication the Access Officer indicated that he had just returned from a two week holiday.

The Deputy Ombudsman attempted to point out to the Access Officer the importance of Departments responding to applications within the required time period and indicated that if, for whatever reasons, a Department feels it cannot respond within the 30-day time period, the head of the Department, in accordance with Section 11 of The Freedom of Information Act, should extend the 30-day limit and properly notify the applicant in writing of such an extension. This was not done in this case and hence the complaint was made to our office.

In any event, during the telephone conversation with my Deputy, the Access Officer indicated that he would contact the complainant to discuss access to the records being sought. As a result of that contact, access to the information requested was granted and this, in essence, resolved the complaint.

Although this complaint was ultimately resolved by the granting of access, the point I emphasized with the Department of Justice was that there would likely not have been need for a complaint to our office had proper procedures been followed under The Freedom of Information Act with respect to the application for access. I believe it is imperative that departments and agencies adhere to the provisions of the Act with respect to time limits and the extension of time limits. Appropriate communication, both verbal and written, will assist in preventing unnecessary work and frustration for all of us.

Order in the Court!

89-110-0003-F1 **Manitoba Justice**

Complaint:	*Presumed Refusal*
Finding:	*Not Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

The complainant in this case submitted a formal complaint to our office indicating that he had written to "the Freedom of Information Access Officer requesting a copy of a Court Order dated Wednesday, September 13th, 1967." His complaint was that he had not received a reply to his application and sixty days had passed since he applied. At the point of writing to our office the complainant indicated that he no longer expected that he would receive a reply.

Since the individual's complaint to our office did not indicate to which Department he had applied for information, nor the name of the Freedom of Information Access Officer to whom he had written, our office made some inquiries to try to determine where his application for access would have gone. My Deputy telephoned the complainant who indicated that his son had mailed the application, but the complainant did not know to whom it had been sent other than to the Department of the Attorney General, which is now called the Ministry of Justice.

Our office made contact with the Director of the Court of Queen's Bench and also the Access Officer of the Ministry of Justice in an attempt to shed some light on this application for access to information under The Freedom of Information Act. While we were unable to determine conclusively what had happened to the application for access, our inquiries did facilitate communication

between the complainant and the Director of the Court of Queen's Bench which ultimately led to the former receiving access to the file and receiving a copy of the document he had requested.

After the complainant communicated with the Director of the Court of Queen's Bench, he was sent (by the Access Officer for the Ministry of Justice) the Court Order he had requested. Although, when initially discussing this matter with our office, the Access Officer for Justice had not made any mention as to who may have originally received our complainant's application for access we noted that this Access Officer's letter to the complainant made reference to "Application for Access - No 89/0042". This would tend to suggest that the application for access may have gone initially to the Access Officer for the Ministry of Justice as had been indicated to us by our complainant. Hence, it would appear that any responsibility for the lack of response rests with that Department.

In any event, in this case the Access Officer for the Ministry of Justice following our inquiries did send our complainant a copy of the Court Order which he had requested, and also advised him that the records of the Court of Queen's Bench are open to parties in a specific action or proceeding, and the The Freedom of Information Act is therefore not applicable. He further advised that access is usually granted upon request to the Director, Court of Queen's Bench, 408 York Avenue, Winnipeg, Manitoba, R3C 0P9.

After receiving the record he had been requesting, the complainant contacted our office further indicating that he believed he had been sent an incorrect record and that he did not believe the record he was sent was a copy of the original Court Order made on Wednesday, September 13, 1967. He sent a copy of the record he had received to us and asked us to review the matter.

Upon examination of the document sent, we could find nothing to indicate that the record was not a copy of the document requested. Nonetheless, I did have one of my Investigators pursue the matter further by going to the Court House and examining the original record and comparing it with the document that had been sent. Our office was satisfied that the document sent was in fact a copy of the original court document and we indicated this to the complainant and stated that we would not be pursuing that matter further.

Whereas, the original application for access to information had been resolved by the granting of access to the information requested, we closed our file on this case.

Department Expresses Regrets over Delay

89-110-0004-F1 **Manitoba Justice**

Complaint:	*Presumed Refusal*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

and

89-110-0005-F1 **Manitoba Justice**

Complaint:	*Presumed Refusal*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

On September 19, 1989 my office received, from one person, two complaints under The Freedom of Information Act, both relating to the Ministry of Justice. In both cases applications for access had been made for information relating to the Canadian Security and Intelligence Service (CSIS).

The first complaint concerned an application for access which the complainant indicated was made to Manitoba Health July 17, 1989 and was subsequently transferred from Health to Justice, with Justice confirming the transfer in a letter dated July 31, 1989. The complaint was that no written correspondence had been received since that date. At the time the complaint was made to our office a reply had not been received to the application and it had been 63 days since the application was made.

The second complaint concerned an application for access which was made to Manitoba Labour on July 19, 1989 and which was later transferred from Labour to Justice. The complainant indicated on the complaint form that Labour had given notification of this transfer by correspondence dated August 10, 1989 and that there had been no written communication since then. The complaint to our office was that a reply had not been received to the application and at the time the complaint was filed it had been 61 days since the application was made.

The Freedom of Information Act stipulates that the head of a department which receives an application for access to information shall respond within thirty days after the department receives the application, and in the case of a transfer the department to which the application has been transferred is deemed to have received the application on the same day as the department which originally received the application. In other words there is a very clear expectation that the government respond to application for access within thirty days after applications are received regardless of what intra/inter-departmental transfers may have to occur. If more time is needed to properly respond to an application the extension of time limits is possible under the Act, with proper notification, of course. Any failure to respond to an application within thirty days or on the expiry of a properly notified extension constitutes a presumed refusal of access. The relevant sections of the Act are as follows:

> ***"Failure to respond within 30 days.***
> *8 Where the head of a department does not respond to an application in a manner authorized by this Act within 30 days after the department receives the application, the head shall, for purposes of this Act, be presumed to have refused to give the applicant access to the record."*
>
> ***"Effect on time limits.***
> *10 A department to which an application is forwarded or transferred under section 9 shall respond to the application in a manner authorized by this Act as if the department had originally received the application, and for purposes of the time limits set out in this Act, the department shall be presumed to have received the application on the same day as the department which originally received the application."*
>
> ***"Extension of time limits.***
> *11(1) The head of a department which receives an application may extend the 30 day limit set out in subsection 6(1) for up to 30 further days if, in order to process the application, the department must*
> *(a) search for, or examine, such a large number of records that meeting the 30 day limit would unreasonably interfere with the operations of the department; or*
> *(b) consult with another office of the department, or with another department, in circumstances such that the consultations cannot reasonably be completed within 30 days."*
>
> ***"Notice of extension.***
> *11(2) A head who extends the 30 day limit in accordance with subsection (1) shall, within 30 days after the department receives the application, send written notice to the applicant of*
> *(a) the extension;*
> *(b) the right of the applicant to file a complaint with the Ombudsman about the extension; and*
> *(c) the right of the applicant to file a complaint with the Ombudsman if, forthwith on the expiry of the extension, the head does not respond to the applicant in a manner authorized by subsection (3)."*
>
> ***"Access or refusal.***
> *11(3) Forthwith on the expiry of an extension under this section, the head shall send written notice to the applicant as to whether or not the head agrees or refuses to give the applicant access to the record, and shall, as the case may be,*
> *(a) give the applicant access to the record; or*
> *(b) state in the notice details of the matters referred to in subsection 6(2), including the right of the applicant to file a complaint with the Ombudsman about the refusal to give access."*
>
> ***"Failure to respond.***
> *11(4) Where on the expiry of an extension under this section the head does not respond to the applicant in a manner authorized by subsection (3), the head shall be presumed to have refused to give the applicant access to the record."*

In the case of both applications for access mentioned above, the complainant indicated on the complaint forms that she had initiated a telephone call to the Freedom of Information Access

Officer, for the Department of Justice, and that he had acknowledged receipt of the applications and confirmed that an extension would be necessary in each case. The complaint forms indicated that no written notice had been received in that regard.

Following receipt of these complaints I officially notified the department of the concerns expressed. I indicated that because there had been no notices of extension given with respect to these applications and because of the length of time these applications had been before the department, these cases had to be viewed as presumed refusals of access. Accordingly, I requested that the department pursuant to subsection 17(1) of the Act provide the complainant with written notice of the reasons for refusal to give access.

> ***"Reasons for refusal.***
> *17(1) Where a complaint relates to a presumed refusal of access under section 8 or subsection 11(4), the Ombudsman shall, immediately upon beginning the investigation, request the head of the department involved in the complaint to give the applicant written notice of the reasons for the refusal to give access."*

In correspondence dated October 2, 1989 (a copy of which was sent to our complainant), I was informed by the Department of Justice of the circumstances surrounding the two applications for access. I noted from that correspondence that following the complaint to our office a response to the applications for access was given on September 25, 1989 providing the applicant with certain information and advising that other parts of the information requested were exempt from release under specific sections of The Freedom of Information Act. The Department's correspondence explained that the applications for access concerned information relating to the Canadian Security and Intelligence Service. The Department acknowledged that it should have corresponded with the applicant informing of the necessity for an extension. The Department indicated that because of workload pressures and in view of the fact that there had been verbal communication with the complainant, department staff omitted to provide formal written notice of the delay. However, the Department expressed regret for any inconvenience that may have been caused by the lack of formal notification.

I gave very careful consideration to these complaints under The Freedom of Information Act, and concluded that whereas after our involvement the complainant had received a response to both the applications and whereas the department had acknowledged and expressed regret for its omission with respect to the formal notification of extensions, these complaints were resolved. Accordingly, I closed our files on these cases.

Are These the Only Records?

89-350-0001-F3 **Manitoba Public Insurance Corporation**

Complaint:	*Refused Access*
Finding:	*Not Supported*
Disposition:	*Report Dismissing Complaint*
Result:	*No Action Required*

Sometimes an applicant for information under The Freedom of Information Act will be granted access to all the records available, but may for some reason or another be convinced that there are still available other records to which access has not been provided. Such a situation existed in this particular case when an individual requested access to the Manitoba Public Insurance Corporation's files concerning a claim in 1980, under his home insurance, resulting from the theft of items from a vehicle. His access application stated in part:

> *"I submitted a claim to MPIC for the theft of some items from a vehicle under my home insurance in 1980. After sending my claim to MPIC for approx. $200.00 I was advised they would pay the claim and I received a check for about $155.00 and considered the matter closed, I was subsequently charged by the Wpg police for fraud surrounding this claim and the charges were withdrawn by the crown and no conviction was registered. I would like to now be given access to the MPIC files concerning this matter and will require copies of specific correspondence in this regard."*

The Manitoba Public Insurance Corporation responded to the applicant's request providing copies of four documents and indicating that the

document provided were the only records that the Corporation had in its possession on the claim in question. The applicant contacted MPIC, by letter, indicating that he had been advised by the Corporation's record office that the original file pertaining to this subject had not been destroyed to date and that there was no record of it being authorized for destruction. Because of this information the applicant felt that there was more information available than that to which he had been given access. Also, the applicant had noted in his letter to MPIC that the information he had been provided appeared to have been copied from a micro film negative and he wanted to know from which series of records these were made and the location of these records. (Our investigation later tended to support that the micro film from which he had received copies was in fact the file to which the records office was referring when speaking to him.)

In any event MPIC responded to the applicant's letter confirming that the records to which he had been given access by way of copies were the only records that the Corporation had in its possession regarding his 1980 claim. The applicant subsequently filed with my office a complaint under The Freedom of Information Act as he felt he had not been granted access to all records held by the Corporation. He believed that there still existed three files, two claim files and one special investigations file and he was asking for our assistance to ensure that these files not be destroyed. Our complainant give us file numbers for the files in question, indicating that

> *"All files are dated between July 1980 and June 29, 1981 and I have been advised that they have not been destroyed under the pertinent regulation MP1-0069. I suggest that I am being denied access to this information, but no one has advised me into what section or authority of The Freedom of Information Act is applicable."*

An investigation was conducted, the Access Guide was reviewed, discussions were held with officials of the Corporation and the microfiche records at the Corporation were viewed. To clarify the question regarding file destruction we reviewed the relevant Corporation Policies MPI-0069 and MPI-0056, which were approved under the Legislative Libraries Act and which state:

MPI-0069

"Special Investigation Report Files
Investigation of an insurance claim where fraud is suspected including copy of a claim file, investigator's notes, photographs of damaged vehicles, original statements of claimants and witnesses.
Destroyed after 7 years."

MPI-0056

"Claim Files
Settlement of claims following general insurance losses. Includes confirmation of policy coverages, claims investigation reports, salvage or subrogation reports, list of lost or damaged property giving age and values, cheque requisitions, receipts for any salvage sold, deductibles recovered or subrogation recoveries and proof-of-loss forms acknowledging amount of loss and settlement.
Destroyed after 7 years."

We were advised that in accordance with these policies, all files relating to our complainant's claim were destroyed with the exception of a microfiche record located in the offices of the Corporations Special Investigative Unit. We were advised that he was provided with access to all records on the microfiche relating to his claim in that he had received a copy of the records. We were advised that the Corporation had no other records relating to this claim in its possession.

The microfiche was reviewed and a copy of the record was obtained. From a review of the application for access, the Corporation's response and our investigation of the matter, it appeared that the Corporation had complied with the request and the complaint under The Freedom of Information Act could not be supported.

The Deputy Ombudsman and I met with the complainant and provided him with our preliminary findings. He was provided with an opportunity to make any further representations respecting his complaint. We also showed him the copy of the records obtained from the Corporation, which he acknowledged he had in his possession. At that time, he did not provide any additional information which would support his feeling that the Corporation had not provided him access to all records in its possession relating to his claim. The complainant however, raised concerns relating to how long the Corporation can retain the microfiche records and the future use of the

microfiche records. It was indicated that inquiries would be made in this regard.

We were advised that while the retention, disposal and destruction policies approved under the Legislative Library Act, identify a time when records may be destroyed, the policies do not restrict the retention of records for longer periods. We learned that the Corporation's retention policy for the microfiche records, in the Special Investigative Unit, had recently been established at 15 years and this policy was approved under the Legislative Library Act. At the time of concluding the file, the reason for retaining these records for 15 years was not clearly understood by this office. We indicated that we would be making further inquiries in this regard and we would contact the complainant in due course to provide clarification on that issue.

However, as far as the complaint under The Freedom of Information Act was concerned, I had no evidence to suggest that the Corporation had refused to provide access to all documents in its possession relating to the application for access. Accordingly, I could make no recommendation under the Act on behalf of the complainant.

I advised the complainant that if he wished to pursue the matter further, in accordance with subsection 30(1) of The Freedom of Information Act, he may appeal the refusal of access to the Court of Queen's Bench by filing an Originating Notice of Motion within (30 days) of receiving my report.

A Crown Corporation Sees the Light

89-350-0002-F3 **Manitoba Public Insurance Corporation**

Complaint:	*Refused Access*
Finding:	*Supported*
Disposition:	*Resolved Informally*
Result:	*No Action Required*

Crown corporations are not exempt from The Freedom of Information Act. Under the Act they fit within the definition of "crown agency" and crown agencies are also included in the definition of "department." This particular case involved one of the more commonly known crown agencies, namely the Manitoba Public Insurance Corporation (MPIC). The complaint was one of the many filed by one individual as a result of his attempts to obtain, from various departments and agencies information relating to services provided by another Crown agency, Manitoba Data Services (MDS). The complainant was experiencing difficulty obtaining, from government departments and agencies, information concerning MDS because at that time the government was in the process of negotiations concerning the possible divestiture of that Crown agency, and the government appeared to be very sensitive to the release of any information which might have the potential to be used to influence their negotiations. Two other cases involving Manitoba Data Services are recorded in this Annual Report, those being the cases involving the Manitoba Civil Service Commission and Manitoba Rural Development.

In this particular case the applicant had applied formally, under The Freedom of Information Act, to MPIC seeking to know what information or lists of the Manitoba Public Insurance Corporation were processed or stored by Manitoba Data Services. Also, the applicant had requested the total expenditures by MPIC on services provided by MDS in the last fiscal year, and he wanted to know what services those expenditures represented.

The request for access to information was received by the Manitoba Public Insurance Corporation and acknowledged by letter sent to the applicant by the Corporation's Access Officer. Subsequently, another letter from the Access Officer informed the applicant that access to the information he had requested was denied pursuant to subsections 43(c) and 43(d)(v) of The Freedom of Information Act. These subsections read as follows:

> *"Economic interests of Manitoba*
> *43 The head of a department may refuse to give access to any record ...*
> *(c) the disclosure of which could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government; or*
> *(d) the disclosure of which could reasonably be expected to injure significantly the financial interests of a depart-*

ment or the government, or to result in undue gain to any person or organization, including but not restricted to a record which discloses ...

(v) a contemplated sale, purchase, lease or expropriation of land or other property, or ..."

Our complainant was aware from our report to him on his similar complaint involving Manitoba Rural Development, that our office had conducted an extensive review of matters relating to access to information involving Manitoba Data Services. In addition to the investigations carried out for that particular complaint, and for the purpose of this complaint I obtained and examined the information to which the complainant had been denied access by the Manitoba Public Insurance Corporation. After reviewing the information, it was my opinion that he should not have been refused access to the records in question as I did not feel the information I viewed was sufficiently serious, critical, or sensitive that disclosure could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractural or other negotiations of a department or the government. Also, I did not feel the disclosure of the information sought from MPIC could reasonably be expected to injure significantly the financial interests of a department or the government or result in undue gain to any person or organization.

Through discussions with the Corporation's Access Officer, an informal resolution to this complaint was reached whereby the Corporation decided to release the requested information and, therefore, a formal recommendation from the Ombudsman was not necessary. I noted from a copy of correspondence sent to our complainant that he was provided access to the information he was seeking. In light of this, our office considered the complaint resolved and closed our file accordingly.

Request for Information Concerning Manitoba Data Services

89-330-0002-F3 **Manitoba Rural Development**

Complaint:	*Refused Access*
Finding:	*Supported*
Disposition:	*Report with Recommendation*
Result:	*Remedial Action*

On September 1, 1989, our office received a formal complaint, under The Freedom of Information Act, against Manitoba Rural Development. On the official complaint form, dated August 31, 1989 the complainant indicated that Manitoba Rural Development had refused access to the records for which he had applied on August 8, 1989. It was further indicated that the complainant had made identical requests to several departments for the kind of information being sought from Rural Development, and that all or most of these departments had provided the information. The Complainant stated that he did not believe that the section of the Act used to justify the refusal was applicable.

On September 28, 1989, we received further information from the complainant concerning his complaint. That information, under date of September 22, 1989, set forth the circumstances surrounding his application for access and his reasons for complaining about the Department's refusal to grant access. He indicated as follows:

"I requested on August 8, 1989 certain information from Manitoba Rural Development which has been refused on August 25, 1989.

The alleged grounds of the refusal were under Section 42(c) of the Act that the public release of the information could interfere with contract or other negotiations of Manitoba Data Services and prejudice the competitive position of the government.

The original request was in two parts. The first part asked for what information and lists of Manitoba Rural Development were stored at MDS. This is purely and simply a request for those records or portions of

records which form a general table of contents of the kind of information stored at this agency. This request does not require the disclosure of any detailed or sensitive information and the release of the general information can not possibly effect any competitive position or interfere with negotiations. The public interest in knowing what general record keeping services are provided by this government agency is important.

The second portion of the request asks for the disclosure of the total annual expenditures of Manitoba Rural Development for services provided by MDS. Since the Annual Report of MDS shows total revenues and the government estimates show global information in this respect, the release of the information on a department by department basis cannot be prejudicial."

Our review of this complaint confirmed that under date of August 8, 1989, the complainant filed with Manitoba Rural Development an official application for access in which he stated:

*"I would like to know what information and lists of **Manitoba Municipal Affairs** and its Boards, Agencies and Commissions are processed or stored at or by Manitoba Data Services. I would also like to know the total expenditures by the Department and its Boards, Agencies and Commissions for services provided to it by MDS in the last available fiscal year."*

The application for access also identified from the Access Guide the guide numbers relevant to the information being sought.

Under date of August 25, 1989 the Access Officer for Rural Development, responded to the complainant's application advising that access was being denied under section 43(c) of The Freedom of Information Act which reads as follows:

"Economic Interest in Manitoba
43 The head of a department may refuse to give access to any record ... (c) the disclosure of which could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government; ..."

In addition to discussions with the complainant and a review of relevant documentation, our investigation included discussions with: the President and General Manager of Manitoba Data Services, the Deputy Minister of Finance, the Comptroller of the Department of Finance, the Manager of Administrative Services of the Department of Finance, the Director of Administration of the Department of Finance, the Secretary of Treasury Board, the Access Officer for Manitoba Rural Development, and the Coordinator of freedom of information matters for Government Records. As well, we reviewed a Crown counsel legal opinion concerning this matter, examined some case notes from the 1989 report of the New Zealand Ombudsman on similar concerns handled by his office under The Official Information Act of that country, and had consultation with the Deputy Commissioner of the Office of the Information Commissioner of Canada.

Very early in our review of this complaint, it was made clear to us by the Access Officer for Manitoba Rural Development, that before responding to our complainant's application for access, she (the Access Officer) had received correspondence from Manitoba Data Services indicating that the sort of disclosure being requested, would result in damage to the Province's bargaining position in the period of negotiations leading up to a possible divestiture of Manitoba Data Services. The correspondence asked that all such inquiries be denied on these grounds. The Access Officer did not feel she was in a position to dispute the information received from Manitoba Data Services regarding the effect of the release of the information requested and therefore, denied the application under subsection 43(c) of The Freedom of Information Act.

Accordingly, our review of this matter led us from Manitoba Rural Development to Manitoba Data Services and from there to the Department of Finance as, in fact, the communication circulated by Manitoba Data Services to all Access Officers, had originated in the office of the Minister of Finance, who is also the Minister responsible for the administration of The Crown Corporation Accountability Act. In essence, it was Manitoba Finance, at first indirectly through Manitoba Data Services and subsequently directly through the Deputy Minister of Finance, that

communicated to all departments the government's wish to avoid the release of any information that could interfere with the negotiations for the sale of Manitoba Data Services. It was the feeling that releasing the information requested might create an unstable and uncertain environment during the negotiating period and Manitoba Finance felt that section 43 of The Freedom of Information Act provided the head of a department the discretion to refuse to give access to any record the disclosure of which could reasonably be expected to interfere with contractual or other negotiations of a department of the government. Manitoba Finance, therefore, suggested that all departments might wish to consult with Manitoba Data Services or Finance for additional information to assist them in formulating a response to access requests for information relating to services provided by Manitoba Data Services.

Whereas, it appeared that Manitoba Finance had been, directly or indirectly, advising, assisting, guiding and perhaps even directing departments which respect to their responses to our complainant's requests for access concerning Manitoba Data Services, we met with Manitoba Finance and a representative of the Divestiture Committee and examined in detail the position taken that release of the information requested would interfere with the negotiating process established for the sale of Manitoba Data Services and would consequently damage the government's negotiating position. We heard in quite some detail, why it was felt that subsection 43(c) of The Freedom of Information Act was applicable in refusing access to the information requested.

After reviewing this entire matter in great detail and after hearing the arguments of the representative of the Divestiture Committee and the Manitoba Finance representatives, I could accept that subsection 43(c) of The Freedom of Information Act was a relevant section of the Act to be taken into consideration when examining and preparing responses to our complainant's requests for information, particularly since the government was at that time engaged in a negotiating process established for the sale of Manitoba Data Services. However, in my opinion, the following are very important and relevant points which must be considered and adhered to if The Freedom of Information Act is to be properly employed for either the granting of access or the refusal of access to information:

1. *Simply because a given exemption clause may appear to be relevant to a given situation, does not mean that that clause can be used to create a blanket exemption across the board for all departments with respect to any applications for access they may receive which are related or appear to be related to applications received by another department.*

2. *Each application for access under The Freedom of Information Act must be dealt with and examined under the Act on its own merits.*

3. *While consultation with other offices and other departments may take place under The Freedom of Information Act, nonetheless the fact remains that the head of the department receiving the application (unless the application is transferred in accordance with the Act to another department) is responsible for either refusing the applicant access to the record or giving the applicant access to the record.*

4. *The head of a department is defined as follows under The Freedom of Information Act.*

   (a) in the case of an unincorporated Crown agency, the minister charged with the administration of the Act under which the agency is established.

   (b) in the case of an incorporated Crown agency, the chief executive officer of the agency, and

   (c) in all other cases, the minister charged with the administration of the department;

5. *In the case of most departments and agencies, the head has delegated in writing all his/her powers to the access officers for the purposes of dealing with matters under The Freedom of Information Act. Therefore, when the Ombudsman, or any other person for that matter, is dealing with the access*

officer of a department or agency he/she is for all intents and purposes under The Freedom of Information Act dealing with the head of the department or agency, that is the Minister or the Chief Executive Officer of the department or agency. Hence when the access officer presents a position, that position represents the position of his/her Minister or Chief Executive Officer, not the position of another government department or agency even though the access officer's opinion may have been influenced by, or may have taken into consideration, the position of another department or agency. In the final analysis the access officer dealing with a specific application for access must be satisfied that the position he or she takes on that application represents the position of the head of his/her department. The head of the department having responsibility for the application is the respondent in a complaint or in an appeal under The Freedom of Information Act - not the head of a department that has been consulted or has provided advice with respect to the application.

6. *If the head of a department which receives an application reasonably believes that another department has a greater interest in the record referred to in the application, the head may transfer the application to the other department. However, a greater interest exists only if the record was originally prepared in or for the other department or if the other department was the first department to obtain the record. (In the cases under review at that time by our office this did not appear to be the case and therefore, it was my opinion that the onus for decisions made regarding the applications for access could not be shifted from the various departments to which those applications were made.)*

7. *Finally, while an exemption may appear relevant, the access officer/department head must himself/herself be satisfied that the criteria of that exemption are actually met with respect to the specific information that has been requested, if the exemption is to be used as a basis for refusal. The department in question, cannot rest simply on the fact that another department is satisfied that the exemption is applicable, but rather each department must come to its own decision and be prepared to explain, support, stand behind, or alter if necessary that decision.*

With the above in mind, we pursued the complaint against Manitoba Rural Development, obtained and examined the information to which the applicant had been denied access and it was my opinion that he should not have been refused access to the records in question, I did not feel that the information I viewed was sufficiently serious, critical, or sensitive that disclosure could have reasonably been expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government. Furthermore, I noted with respect to the information I was provided, most of this was readily available from the Access Guide which is a public document. In his complaint to our office the complainant made it clear that in asking the department for what information and lists were stored at Manitoba Data Services, he was asking not for any detailed or sensitive information, but rather for a general table of contents of the kind of information stored at the agency. I also noted from a review of the Access Guide that this kind of general table of contents could be gleaned for most departments although, I recognized that it might be difficult to determine conclusively for all departments, what kinds of data might be stored at Manitoba Data Services. Nonetheless, if one knew the list of government departments, agencies, boards, commissions and crown corporations using the services of Manitoba Data Services (as was known by the complainant since this information was made available to him by MDS itself) it was quite possible with the use of the Access Guide to come up with information similar to that which had already been provided to him by those departments which responded positively to his request.

The financial information requested by our complainant was not available through the Access Guide, but in my opinion was basically information to which the public would normally have access and as suggested by the complainant much was available or could eventually become available through Annual Reports and/or the Government estimate process. In any event, I was not convinced that the release of the total expenditure by a department for services provided to it by MDS in the last available fiscal year could **reasonably** be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government.

In conclusion, it was my opinion that the applicant should have been granted access to the information requested from Manitoba Rural Development. Accordingly, in my report on this complaint I recommended to Manitoba Rural Development that access be given. Because of the interest that Manitoba Finance and the Minister responsible for the administration of The Crown Corporation Accountability Act had in this matter, I forwarded copies of my report and recommendation as a courtesy and for information purposes. It was clear however, from my report that under The Freedom of Information Act the respondent department in this complaint, Manitoba Rural Development, had to provide to me, within fourteen days of receiving my report, a written response indicating

> *(a) any action taken or proposed to be taken to implement my recommendation; or*
>
> *(b) reasons why the head refuses to take action to implement my recommendation.*

I am pleased to report that within the fourteen days the Department responded to me accepting my recommendation and provided our complainant with the information he had been seeking. Our file on this complaint was closed.

Public Relations

The Freedom of Information Act speaks of a "designated minister" and defines that term to mean the minister charged by the Lieutenant Governor in Council with the administration of this Act. The responsibility for informing the public about The Freedom of Information Act would appear to rest with the government through the designated minister who, among other duties, has the responsibility for the publication, availability, and updating of the Access Guide. (See Sections 50 to 59 of the Act at the back of this report.) The designated minister currently responsible for the administration of the Act, and the Regulation, is the Minister of Culture, Heritage and Recreation. During the past year Manitoba Culture, Heritage and Recreation has produced a brochure outlining for the public information concerning The Freedom of Information Act. That brochure outlines the public's right to complain to Manitoba's Ombudsman if dissatisfied with the information access services received.

The Freedom of Information Act places no particular public relations function on the Ombudsman other than to report annually to the Speaker of the Assembly on the exercise and performance of my powers, duties and functions under this Act. However, in the course of performing my functions under The Ombudsman Act I have had many opportunities to speak publicly to a variety of audiences on the role of the Ombudsman and on these occasions, I generally include a word about The Freedom of Information Act and the Ombudsman's role under that Act. As well as including Freedom of Information into an overall description of the Ombudsman's function, I have also been asked on occasion to participate in events dealing specifically with access to information and/or protection of privacy issues, and to speak particularly on those topics. During 1989, I had the pleasure of addressing a meeting organized by Manitoba Culture, Heritage and Recreation. This was a meeting of the Freedom of Information Interest Group consisting of Access Officers and Access Coordinators from various departments and agencies. I spoke to the group about my approaches and methods of investigating complaints made under The Freedom of Information Act.

Also during the past calendar year, I participated in a Public Forum on Freedom of Information in Manitoba, organized by the Manitoba Library Association. At that forum I explained the complaint procedures under The Freedom of Information Act and the role of the Ombudsman in that regard.

Finally, during the year I had the opportunity to attend, in Ottawa, along with my Deputy, an International Workshop and Training Session on Access and Privacy Laws. This particular workshop was presented jointly by the American Society of Access Professionals and The Canadian Access and Privacy Association and featured many well known personalities in the access and privacy fields, such as: Inger Hansen, Federal Information Commissioner; John Grace, Federal Privacy Commissioner; Gordon Dodds, Manitoba's Provincial Archivist; and many other Canadian and International figures. Whereas our office was relatively new at the time the many topics discussed were of great interest to us and the information gathered useful to us in our work. Among other things the conference focused upon: various access to information Acts; privacy legislation; the question of what is in the public interest; a comparison of various provincial and state laws; access to information and Freedom of Information Acts from a user's perspective; the federal communications policy and the implications to the access regime; official secrecy in the United Kingdom; the questions of whether security and intelligence should be a part of the access regime; information technology and privacy; and several new and emerging privacy issues such as AIDS and confidentially, genetic engineering, compulsory drug testing and so forth. The conference was very well attended and, I am sure, of benefit to all who participated.

Some General Comments

1. **Presumed Refusals**

   In my 1988 Annual Report I suggested that department officials keep in mind the importance of responding to applications for access within the thirty day time limit defined in the Act in order to avoid a presumed refusal of access. It was interesting to note that of the 48 complaints received in 1989, eight of these, ie 17%, involved a presumed refusal of access and our investigations supported the validity of five (65%) of these presumed refusal complaints. It is perhaps even more interesting to note that all the presumed refusal complaints, except for one that was discontinued by the complainant, were resolved informally and did not require any formal recommendation by the Ombudsman. In other words it appears that these complaints could have been avoided in the first place by following proper procedure under the Act in adhering to the response time, or giving proper notice of extension or simply by improved one-to-one communication. Most of the presumed refusal complaints turned out not to be refusals but rather procedural oversights in the handling of the access applications. Therefore, I am respectfully suggesting that those department officials responsible for processing applications for access to information establish a system which will minimize the potential for procedural oversights which ultimately lead to unnecessary complaints.

2. **Length of Time for Investigations**

   In my first Annual Report under The Freedom of Information Act, under a heading, The Investigation of Complaints, I indicated that although the Act places no time restriction on the Ombudsman for completing investigations, I had set an internal goal of a thirty day time period for completing complaints. None of the complaints received in 1988 were completed within that time frame. I wrote in the 1988 Annual Report that over the next year I would be monitoring very closely the length of time and the resources required for the proper investigation of complaints under The Freedom of Information Act.

   Regarding the forty-four complaints completed during 1989 some were completed in less than a month, while others took as long as six months. The average time for the entire caseload was about 3 1/2 months per complaint. While this time frame was longer than my original idealistic one month time frame, it was in my opinion, and when compared with other jurisdictions, not a bad time frame particularly in light of the heavy workload in our office and nature of the complaints being investigated under The Freedom of Information Act. If we are to reduce this time frame significantly I believe that additional staff would be required. Unless our workload and responsibilities increase over the next year, I feel confident that we can continue to process Freedom of Information complaints within a average turn around time of three and one half months. In any event, I shall continue to monitor this aspect of our work over the next year and, if improvement is necessary, take whatever steps may be required so that we will be in a position to provide the best possible service under The Freedom of Information Act.

The Freedom of Information Act

CHAPTER F175

THE FREEDOM OF INFORMATION ACT

(Assented to July 11, 1985)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

"applicant" means a person who applies for access to a record under this Act; ("demandeur")

"application" means an application for access to a record under this Act; ("demande")

"Cabinet" means the Executive Council appointed under The Executive Government Organization Act, and includes a committee of the Executive Council; ("Cabinet")

"complainant" means a person who files a complaint with the Ombudsman; ("plaignant")

"complaint" means a complaint filed with, or initiated by, the Ombudsman under this Act; ("plainte")

"court" means the Court of Queen's Bench. ("Cour")

"Crown agency" means

(a) any board, commission, association, or other body, whether incorporated or unincorporated, all the members of which, or of the board of management or board of directors of which, are appointed by an Act of the Legislature or by order of the Lieutenant Governor in Council, or

CHAPITRE F175

LOI SUR LA LIBERTÉ D'ACCÈS À L'INFORMATION

(Sanctionnée le 11 juillet 1985)

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1 Les définitions qui suivent s'appliquent à la présente loi.

"Cabinet" Le Conseil exécutif nommé en vertu de la Loi sur l'organisation du gouvernement, y compris un comité du Conseil. ("Cabinet")

"Cour" La Cour du Banc de la Reine. ("court")

"demande" Demande de communication d'un document, en vertu de la présente loi. ("application")

"demandeur" La personne qui fait une demande de communication d'un document, en vertu de la présente loi. ("applicant")

"document" Toutes informations enregistrées, quels que soient leur forme et leur support. Sans préjudice de la généralité de ce qui précède, sont assimilés à un document

a) toute correspondance, note, tout dossier, registre, catalogue, livre, plan, carte, dessin, diagramme, photographie, film, tableau, illustration ou graphique, microformule, enregistrement sonore, magnétoscopique et informatisé;

(b) any corporation the election of the board of directors of which is controlled by the Crown, directly or indirectly, through ownership of the shares of the capital stock thereof by the Crown or by a board, commission, association, or other body which is a Crown agency within the meaning of this definition,

but does not include the Provincial Auditor, Chief Electoral Officer or Ombudsman; ("organisme gouvernemental")

"department" means a department or branch of the Executive Government of Manitoba, and includes a Crown agency; ("ministère")

"designated minister" means the minister charged by the Lieutenant Governor in Council with the administration of this Act; ("ministre désigné")

"exempt information" means information which falls within an exemption; ("renseignements privilégiés")

"exemption" means a class or category of information to which the head of a department is required or authorized to refuse access under sections 38 to 49; ("exemption")

"head" or "head of a department" means

(a) in the case of an unincorporated Crown agency, the minister charged with the administration of the Act under which the agency is established,

(b) in the case of an incorporated Crown agency, the chief executive officer of the agency, and

(c) in all other cases, the minister charged with the administration of the department; ("responsable" ou "responsable d'un ministère")

"investigation" means the investigation by the Ombudsman of a complaint; ("enquête")

"minister" means a member of the Cabinet. ("ministre")

b) tout manuel ou autre guide utilisé par les cadres ou les employés d'un ministère, afin d'interpréter un texte législatif ou de diriger un programme ministériel ou des activités de même nature qui concernent le public;

c) une transcription des notes explicatives se rapportant à un dossier, lorsque la forme du dossier est telle qu'il ne peut être compris qu'en y joignant de telles notes;

d) une copie d'un dossier; et

e) une partie d'un dossier. ("record")

"enquête" L'enquête faite par l'Ombudsman à l'égard d'une plainte. ("investigation")

"exemption" Classe ou catégorie de renseignements à l'égard de laquelle le responsable d'un ministère doit ou peut refuser la communication, en application des articles 38 à 49. ("exemption")

"fonctionnaire" Sont comprises parmi les fonctionnaires les personnes de la fonction publique du gouvernement du Manitoba ou de tout autre gouvernement :

a) qui sont autorisées à faire ou à mettre en application tout acte ou toute chose ou à exercer tout pouvoir; ou

b) à l'égard desquelles une loi d'intérêt public impose un devoir ("public officer")

"ministère" Ministère ou service du gouvernement du Manitoba, y compris un organisme gouvernemental. ("department")

"ministre" Membre du cabinet. ("minister")

"ministre désigné" Le ministre chargé par le lieutenant-gouverneur en conseil de l'application de la présente loi. ("designated minister")

"Ombudsman" L'Ombudsman nommé en vertu de la Loi sur l'Ombudsman, y compris toute personne qui est employée par celui-ci ou qui agit en vertu de son autorité. ("Ombudsman")

"organisation" Est assimilé à une organisation un syndicat ouvrier ou une autre association non constituée en corporation. ("organization")

"Ombudsman" means the Ombudsman appointed under The Ombudsman Act, and includes any person employed by or otherwise acting under the authority of the Ombudsman; ("Ombudsman")

"organization" includes a trade union or other unincorporated association; ("organisation")

"public officer" includes any person in the public service of the Government of Manitoba or any other government

(a) who is authorized to do, or enforce the doing of, any act or thing or to exercise any power, or

(b) upon whom any duty is imposed, by or under any public Act; ("fonctionnaire")

"record" means any kind of recorded information, regardless of physical form or characteristics, and without restricting the generality of the foregoing includes

(a) any correspondence, memorandum, file, register, index, book, plan, map, drawing, diagram, photograph, film, painting, pictorial or graphic work, microform, sound recording, video tape, and machine-readable record,

(b) any manual, handbook or other guideline used by the officers or employees of a department to interpret an enactment or to administer a departmental program or activity which affects the public,

(c) where the form of a record is such that the record cannot be understood without explanation, a transcript of the explanation of the record,

(d) a copy of a record, and

(e) a part of a record; ("document")

"third party", in respect of an application, means any person or organization other than the applicant or a department. ("tiers")

"organisme gouvernemental" Selon le cas :

a) les régies, commissions, associations ou autre entités, constituées ou non en corporations, dont tous les membres ou tous ceux du conseil d'administration ou de direction sont nommés par une loi de la Législature ou par un décret du lieutenant-gouverneur en conseil; ou

b) toute corporation dont l'élection du conseil de direction est sous l'autorité directe ou indirecte de la Couronne, par l'entremise de la propriété des actions du capital-actions de ladite corporation par la Couronne ou par une régie, commission, association ou autre entité qui est un organisme gouvernemental au sens de la présente définition.

Le vérificateur provincial, le directeur général des élections et l'Ombudsman ne sont pas assimilés à un organisme gouvernemental. ("Crown agency")

"plaignant" La personne qui dépose une plainte auprès de l'Ombudsman. ("complainant")

"plainte" Plainte qui est déposée auprès de l'Ombudsman ou qui émane de celui-ci, en vertu de la présente loi. ("complaint")

"renseignements privilégiés" Renseignements qui sont compris dans une exemption. ("exempt information")

"responsable" ou "responsable d'un ministère"

a) dans le cas d'un organisme gouvernemental non constitué en corporation, le ministre chargé de l'application de la loi sous le régime de laquelle l'organisme est constitué;

b) dans le cas d'un organisme gouvernemental constitué en corporation, le mandataire général de l'organisme; et

c) dans tous les autres cas, le ministre chargé de l'administration du ministère. ("head" or "head of department")

"tiers" Dans le cas d'une demande, toute personne ou organisation autre que le demandeur ou qu'un ministère. ("third party")

Meaning of access.
2(1) A person who is given access to a record under this Act has, subject to section 7, the right
(a) to examine the record; or
(b) to obtain a copy of the record.

Exercise of access right.
2(2) The head of the department which gives access to a record under this Act shall decide whether access is given in accordance with clause (1)(a) or clause (1)(b), but where the condition of the record so permits, the head shall give the applicant an opportunity both to examine the record and to obtain a copy of it.

Records stored by electronic means.
2(3) Where a department receives an application for access to a microform, film, sound recording, machine-readable record or other record of information stored by electronic means, the head of the department shall be presumed to have given access to the record under this Act where the head
(a) permits the applicant to examine a transcript of the record; or
(b) provides the applicant with a copy of the transcript of the record; or
(c) in the case of a record produced for visual or aural reception, permits the applicant to view or hear the record or provides the applicant with a copy of it.

Right of access.
3 Subject to this Act, every person has, upon application, a right of access to any record in the custody or under the control of a department, including any record which discloses information about the applicant.

Contents of application.
4 Every application shall be made in prescribed form to the department which the applicant believes has custody or control of the record, and shall provide sufficient detail to enable an experienced officer or employee of the department to identify and locate the record.

Accès
2(1) Une personne à qui est accordée la communication d'un document, en vertu de la présente loi, a le droit, sous réserve de l'article 7 :
a) de consulter le document; ou
b) d'en obtenir une copie.

Exercice du droit à la communication d'un document
2(2) Le responsable du ministère qui accorde la communication d'un document en vertu de la présente loi doit décider si la communication est accordée conformément à l'alinéa (1)a) ou b). Cependant, lorsque l'état du document le permet, le responsable doit permettre au demandeur de consulter le document et d'en obtenir une copie.

Documents conservés par des moyens électroniques
2(3) Lorsqu'un ministère reçoit une demande de communication d'une microformule, d'un film, d'un enregistrement sonore, d'un enregistrement informatisé ou d'un autre document qui renferme des renseignements et qui est conservé par des moyens électroniques, le responsable du ministère est réputé avoir accordé la communication du document en vertu de la présente loi :
a) s'il autorise le demandeur à consulter une transcription du document;
b) s'il fournit au demandeur une copie de la transcription du document; ou
c) s'il autorise le demandeur à regarder ou à entendre le document ou s'il lui fournit une copie du document, lorsque ce dernier est produit afin d'être vu ou entendu.

Droit d'accès
3 Sous réserve de la présente loi et suite à une demande, toute personne a droit à l'accès aux documents sous la garde ou la responsabilité d'un ministère, y compris à ceux qui divulguent des renseignements au sujet du demandeur.

Contenu de la demande
4 Chaque demande doit être faite, dans les formes prescrites, auprès du ministère qui, de l'avis du demandeur, est responsable du document ou en a la garde; elle doit être rédigée en des termes suffisamment précis pour permettre à un cadre ou à un employé expérimenté du ministère d'identifier ou de trouver le document.

Notice of right to file complaint.

5 The prescribed form for applications shall contain notification that the applicant has the right to file a complaint with the Ombudsman in the event the department fails to respond to the application in a manner authorized by this Act within 30 days.

Notice regarding access.

6(1) Subject to sections 9 and 11, the head of a department which receives an application shall, within 30 days after the department receives the application,

(a) send written notice to the applicant as to whether or not the head agrees or refuses to give the applicant access to the record; and

(b) if access is to be given, give the applicant access to the record.

Contents of refusal.

6(2) Where the head refuses to give the applicant access to the record, the notice referred to in clause (1)(a) shall state the right of the applicant to file a complaint with the Ombudsman about the refusal to give access, and the notice shall further state

(a) in the case of a record which the department claims does not exist or cannot be located, that the record does not exist or cannot be located;

(b) in the case of a record which does exist and can be located, the specific provision of this Act upon which the refusal to give access is based.

Fees.

7 An applicant who is given access to a record shall, prior to examining the record or obtaining a copy thereof, pay to the department which controls the record such fees as may be prescribed by regulation.

Failure to respond within 30 days.

8 Where the head of a department does not respond to an application in a manner authorized by this Act within 30 days after the department receives the application, the head shall, for purposes of this Act, be presumed to have refused to give the applicant access to the record.

Avis du droit de dépôt d'une plainte

5 La formule prescrite des demandes doit comprendre un avis indiquant que le demandeur a le droit de déposer une plainte auprès de l'Ombudsman, dans le cas où le ministère néglige de donner suite à la demande dans un délai de 30 jours, d'une façon que la présente loi autorise.

Avis relatif à une demande de communication de document

6(1) Sous réserve des articles 9 et 11, le responsable d'un ministère recevant une demande est tenu, dans les 30 jours suivant la réception d'une telle demande par le ministère :

a) d'aviser par écrit le demandeur qu'il accepte ou refuse de lui communiquer le document; et

b) le cas échéant, de lui accorder la communication du document.

Contenu du refus

6(2) Lorsque le responsable refuse au demandeur la communication du document, l'avis prévu à l'alinéa (1)a) doit mentionner le droit du demandeur de déposer une plainte auprès de l'Ombudsman relativement au refus; l'avis doit mentionner en outre :

a) le fait que le document n'existe pas ou ne peut être trouvé lorsque, selon le ministère, il s'agit d'un tel cas;

b) la disposition précise de la présente loi sur laquelle est fondé le refus de communication de document, dans le cas d'un document qui existe et qui peut être trouvé.

Frais de communication

7 Le demandeur à qui la communication d'un document est accordée doit, avant de le consulter ou d'en obtenir une copie, payer au ministère responsable du document le droit fixé par règlement.

Défaut de donner suite à la demande

8 Lorsque le responsable d'un ministère ne donne pas suite à une demande d'une façon que la présente loi autorise, dans les 30 jours suivant la réception d'une telle demande par le ministère, il est réputé, aux fins de la présente loi, avoir refusé au demandeur la communication du document.

Forwarding application.
9(1) Where a department receives an application for access to a record which the department does not have in its custody or under its control, the head of the department shall make all necessary inquiries in order to determine whether any other department has custody or control of the record, and where the head determines that another department has custody or control of the record, the head shall

(a) forward the application to the other department; and

(b) send written notice to the applicant that the application has been forwarded to the other department.

Transfer of application.
9(2) Where the head of a department which receives an application reasonably believes that another department has a greater interest in the record referred to in the application, the head may transfer the application to the other department, and, upon making a transfer, the head shall send written notice of the transfer to the applicant.

Meaning of greater interest.
9(3) For purposes of subsection (2), a department has a greater interest in a record if

(a) the record was originally prepared in or for the department; or

(b) the department was the first department to obtain the record.

Effect on time limits.
10 A department to which an application is forwarded or transferred under section 9 shall respond to the application in a manner authorized by this Act as if the department had originally received the application, and for purposes of the time limits set out in this Act, the department shall be presumed to have received the application on the same day as the department which originally received the application.

Extension of time limits.
11(1) The head of a department which receives an application may extend the 30 day limit set out in subsection 6(1) for up to 30 further days if, in order to process the application, the department must

Demande envoyée à un autre ministère
9(1) Lorsqu'un ministère reçoit une demande de communication d'un document dont il n'a pas la garde ou la responsabilité, le responsable du ministère doit effectuer toutes les enquêtes nécessaires afin de déterminer si le document est sous la garde ou la responsabilité d'un autre ministère. Lorsqu'il détermine un tel fait, il doit :

a) envoyer la demande à l'autre ministère; et

b) aviser par écrit le demandeur que la demande a été envoyée à l'autre ministère.

Transmission de la demande
9(2) Si le responsable d'un ministère recevant une demande juge de façon raisonnable que le document mentionné dans la demande concerne davantage un autre ministère, il peut la transmettre à l'autre ministère. Suite à la transmission de la demande, il doit en aviser par écrit le demandeur.

Justification de la transmission
9(3) Pour les besoins du paragraphe (2), un document concerne davantage un ministère :

a) si ce dernier est à l'origine du document, soit qu'il l'ait préparé lui-même ou qu'il ait d'abord été préparé à son intention; ou

b) si ce dernier a été le premier ministère à recevoir le document

Conséquence relative aux délais
10 Un ministère à qui une demande est envoyée ou transmise en application de l'article 9 doit donner suite à la demande d'une façon que la présente loi autorise, comme s'il avait reçu la demande dès le début. Aux fins du calcul des délais prévus dans la présente loi, le ministère est réputé avoir reçu la demande le jour même de sa réception initiale par un autre ministère.

Prorogation du délai
11(1) Le responsable d'un ministère recevant une demande peut proroger le délai de 30 jours mentionné au paragraphe 6(1) d'une période supplémentaire de 30 jours si le ministère doit, afin de traiter une demande :

(a) search for, or examine, such a large number of records that meeting the 30 day limit would unreasonably interfere with the operations of the department; or

(b) consult with another office of the department, or with another department, in circumstances such that the consultations cannot reasonably be completed within 30 days.

Notice of extension.

11(2) A head who extends the 30 day limit in accordance with subsection (1) shall, within 30 days after the department receives the application, send written notice to the applicant of

(a) the extension;

(b) the right of the applicant to file a complaint with the Ombudsman about the extension; and

(c) the right of the applicant to file a complaint with the Ombudsman if, forthwith on the expiry of the extension, the head does not respond to the applicant in a manner authorized by subsection (3).

Access or refusal.

11(3) Forthwith on the expiry of an extension under this section, the head shall send written notice to the applicant as to whether or not the head agrees or refuses to give the applicant access to the record, and shall, as the case may be,

(a) give the applicant access to the record; or

(b) state in the notice details of the matters referred to in subsection 6(2), including the right of the applicant to file a complaint with the Ombudsman about the refusal to give access.

Failure to respond.

11(4) Where on the expiry of an extension under this section the head does not respond to the applicant in a manner authorized by subsection (3), the head shall be presumed to have refused to give the applicant access to the record.

a) chercher ou consulter un si grand nombre de documents que l'observation du délai de 30 jours entraverait de façon sérieuse le fonctionnement du ministère; ou

b) consulter un autre bureau du ministère ou un autre ministère dans des circonstances telles que les consultations rendraient pratiquement impossible l'observation du délai de 30 jours.

Avis de prorogation

11(2) Un responsable qui proroge le délai de 30 jours conformément au paragraphe (1) doit, dans les 30 jours suivant la réception de la demande par le ministère, aviser par écrit le demandeur :

a) de la prorogation;

b) de son droit de déposer une plainte auprès de l'Ombudsman, relativement à la prorogation; et

c) de son droit de déposer une plainte auprès de l'Ombudsman aussitôt à la fin de la prorogation, si le responsable ne donne pas suite à sa demande, d'une façon autorisée par le paragraphe (3).

Communication du document accordée ou refusée

11(3) Immédiatement à la fin d'une prorogation prévue en application du présent article, le responsable doit aviser par écrit le demandeur qu'il accepte ou refuse de lui communiquer le document et doit, selon le cas :

a) accorder au demandeur la communication du document; ou

b) mentionner en détail dans l'avis les affaires prévues au paragraphe 6(2), y compris le droit du demandeur de déposer une plainte auprès de l'Ombudsman relativement au refus de communication du document.

Défaut de donner suite à la demande

11(4) Lorsqu'à la fin d'une prorogation prévue en application du présent article, le responsable ne donne pas suite à la demande d'une façon autorisée par le paragraphe (3), il est réputé avoir refusé au demandeur la communication du document.

Severability.
12(1) Notwithstanding any other provision of this Act, where a department receives an application for access to a record which contains exempt information, the head of the department shall give access to all the information in the record which is not exempt and which can reasonably be severed from the exempt information.

Explanation or interpretation of record.
12(2) Where the head of a department gives access to any record under this Act, the head may, without altering the record, supply the applicant with such additional information as the head believes will be necessary to explain or interpret the record.

Information filed by applicant.
13(1) An applicant given access to a record which discloses information about himself or herself is entitled to submit to the department which has custody or control of the record

(a) a written objection respecting any error or omission of fact which the applicant alleges is contained in the record; and

(b) a written objection to, or explanation or interpretation of, any opinion which has been expressed by a third party about the applicant and which is contained in the record.

Information becomes part of record.
13(2) As of the date of its submission, any objection, explanation or interpretation submitted under subsection (1) becomes part of the record and shall not be destroyed, altered or removed therefrom.

Correction of factual error.
13(3) Where the head of the department which has custody or control of a record referred to in subsection (1) is satisfied that the record contains an error or omission of fact, the head shall cause the record to be corrected.

Renseignements non privilégiés extraits d'un document
12(1) Par dérogation à toute autre disposition de la présente loi, lorsqu'un ministère reçoit une demande de communication d'un document qui contient des renseignements privilégiés, le responsable du ministère doit accorder la communication de tous les renseignements non privilégiés qui sont contenus dans le document et qui peuvent être extraits sans problèmes sérieux.

Explication ou interprétation d'un document
12(2) Le responsable d'un ministère qui accorde la communication d'un document en vertu de la présente loi peut, sans le modifier, fournir au demandeur les autres renseignements qu'il juge être nécessaires pour l'explication ou l'interprétation ultérieure du document.

Renseignements déposés par le demandeur
13(1) Un demandeur à qui est accordée la communication d'un document qui divulgue des renseignements à son sujet a droit de soumettre au ministère qui a la garde ou la responsabilité du document :

a) une opposition écrite concernant toute erreur ou omission de fait qui, selon le demandeur, est contenue dans le document; et

b) une opposition écrite à une opinion qu'un tiers a exprimée au sujet du demandeur et qui est contenue dans le document, ou une explication ou une interprétation de ladite opinion.

Renseignements faisant partie du document
13(2) À partir de la date à laquelle une opposition, une explication ou une interprétation a été soumise en vertu du paragraphe (1), celle-ci fait partie du document et ne doit pas être détruite, modifiée ou retirée de celui-ci.

Correction d'erreurs de fait
13(3) Le responsable du ministère qui a la garde ou la responsabilité d'un document mentionné au paragraphe (1) y fait apporter des corrections s'il est convaincu que le document renferme une erreur ou une omission de fait.

Complaint by applicant

14 An applicant who

(a) is refused access to a record; or

(b) receives a notice of extension under subsection 11(2);

may, in person or through counsel, file a complaint in respect thereof with the Ombudsman.

Duties of Ombudsman

15(1) In addition to any other powers, duties and functions which may be conferred or imposed on the Ombudsman under this Act, the Ombudsman shall receive and investigate every complaint

(a) by an applicant about

(i) the refusal by the head of a department to give the applicant access to a record, or

(ii) an extension under section 11 of the 30 day limit for responding to the application; and

(b) by any person about the adequacy or availability of the Access Guide required to be published under this Act.

Complaint by Ombudsman

15(2) Where the Ombudsman is satisfied that there are reasonable grounds to investigate any matter referred to in subsection (1), the Ombudsman may initiate a complaint about the matter, and subject to subsection 30(4) the provisions of this Act apply with necessary modifications to a complaint initiated by the Ombudsman.

Complaints in prescribed form

15(3) Every complaint shall be in prescribed form.

Powers of investigation

16(1) Upon receiving or initiating a complaint, the Ombudsman shall forthwith investigate the complaint and for this purpose the Ombudsman has, subject to this Act, all the powers of a commissioner appointed under Part V of The Manitoba Evidence Act; but sections 85 and 86 of The Manitoba Evidence Act do not apply to any investigation conducted by the Ombudsman under this Act.

S.M. 1988-89, c. 13, s. 12.

Plainte déposée par le demandeur

14 Un demandeur peut, en personne ou par l'intermédiaire d'un avocat, déposer une plainte auprès de l'Ombudsman :

a) si la communication d'un document lui est refusée; ou

b) s'il reçoit un avis de prorogation en application du paragraphe 11(2).

Fonctions de l'Ombudsman

15(1) En plus des autres pouvoirs et fonctions conférés à l'Ombudsman en vertu de la présente loi, celui-ci doit recevoir toutes les plaintes et faire enquête sur toutes les plaintes qui sont déposées :

a) par un demandeur relativement :

(i) au refus du responsable d'un ministère de lui accorder la communication d'un document, ou

(ii) à une prorogation du délai de 30 jours, prévue en application de l'article 11, afin de donner suite à la demande; et

b) par toute personne relativement à la pertinence ou à la disponibilité du guide d'accès à l'information devant être publié en vertu de la présente loi.

Plainte émanant de l'Ombudsman

15(2) L'Ombudsman peut prendre l'initiative d'une plainte relative à une question prévue au paragraphe (1), s'il est convaincu qu'une enquête devrait être menée relativement à une telle question. Sous réserve du paragraphe 30(4), les dispositions de la présente loi s'appliquent, avec les adaptations nécessaires, à une plainte émanant de l'Ombudsman.

Forme des plaintes

15(3) Chaque plainte doit être déposée en la forme prescrite.

Pouvoirs relatifs à la tenue d'une enquête

16(1) L'Ombudsman, après avoir reçu une plainte ou en avoir pris l'initiative, doit procéder immédiatement à l'instruction de celle-ci et à cette fin, il possède, sous réserve de la présente loi, tous les pouvoirs d'un commissaire nommé en vertu de la Partie V de la Loi sur la preuve au Manitoba. Cependant, les articles 85 et 86 de cette loi ne s'appliquent pas à une enquête menée par l'Ombudsman en vertu de la présente loi.

L.M. 1988-89, c. 13, art. 12.

Delegation of powers
16(2) The Ombudsman may delegate to any person the authority to investigate a complaint, and any person so authorized may exercise the powers, and shall perform the duties and functions, assigned to the Ombudsman under this Act; but the Ombudsman shall not delegate to any other person the duty referred to in section 55.

Right of entry
16(3) Notwithstanding any other Act of the Legislature or any privilege under the law of evidence, the Ombudsman has, for the purpose of investigating a complaint, the right

(a) to enter any office of a department and examine any record in the custody of the department; and

(b) to converse in private with any officer or employee of a department.

Reasons for refusal
17(1) Where a complaint relates to a presumed refusal of access under section 8 or subsection 11(4), the Ombudsman shall, immediately upon beginning the investigation, request the head of the department involved in the complaint to give the applicant written notice of the reasons for the refusal to give access.

Contents of notice
17(2) Forthwith upon receiving the request from the Ombudsman under subsection (1), the head shall send to the applicant a written notice stating

(a) in the case of a record which the department claims does not exist or cannot be located, that the record does not exist or cannot be located;

(b) in the case of a record which does exist and can be located, the specific provision of this Act upon which the refusal to give access is based.

Withholding information from Ombudsman
18 No person shall

(a) withhold from the Ombudsman any record required by the Ombudsman for the purpose of an investigation; or

(b) refuse to furnish any information required by the Ombudsman for the purpose of an investigation.

Délégation de pouvoirs
16(2) L'Ombudsman peut déléguer le pouvoir d'instruction des plaintes. Les délégués peuvent exercer les pouvoirs de l'Ombudsman qui sont prévus par la présente loi et exécutent les fonctions de celui-ci. Cependant, l'Ombudsman ne délègue à aucune autre personne la fonction prévue à l'article 55.

Droit de pénétrer dans les bureaux d'un ministère
16(3) Par dérogation à toute autre loi de la Législature ou à toute immunité reconnue par le droit de la preuve, l'Ombudsman a le droit, pour les besoins d'instruction d'une plainte :

a) de pénétrer dans tout bureau d'un ministère et d'examiner les documents sous la garde du ministère; et

b) de s'entretenir en privé avec un cadre ou un employé d'un ministère.

Raisons du refus
17(1) Lorsqu'une plainte se rapporte à un refus présumé de communication d'un document en vertu de l'article 8 ou du paragraphe 11(4), l'Ombudsman doit, aussitôt après le début de l'enquête, demander au responsable du ministère qui s'occupe de la plainte de donner au demandeur un avis écrit indiquant les raisons d'un tel refus.

Contenu du refus
17(2) Immédiatement après la réception de la demande de l'Ombudsman en vertu du paragraphe (1), le responsable doit envoyer au demandeur un avis écrit indiquant :

a) le fait que le document n'existe pas ou ne peut être trouvé lorsque, selon le ministère, il s'agit d'un tel cas;

b) la disposition précise de la présente loi sur laquelle est fondé le refus de communication de document, dans le cas d'un document qui existe et qui peut être trouvé.

Refus de communiquer des informations à l'Ombudsman
18 Nul ne doit :

a) refuser à l'Ombudsman un document qu'il exige pour les besoins d'une enquête; ou

b) refuser de fournir une information que l'Ombudsman exige pour les besoins d'une enquête.

Investigations in private.
19 The Ombudsman shall conduct every investigation in private.

Right to make representations.
20 In the course of an investigation, the Ombudsman shall give to the complainant and to the head of the department, if any, involved in the complaint a reasonable opportunity to make representations respecting the complaint.

Secrecy.
21(1) The Ombudsman shall maintain secrecy in respect of all matters which come to the knowledge of the Ombudsman in the course of any investigation.

Disclosure in certain situations.
21(2) Notwithstanding subsection (1), the Ombudsman may disclose

(a) in the course of an investigation, any matter which the Ombudsman considers necessary to disclose in order to facilitate the investigation;

(b) in a report prepared under this Act, any matter which the Ombudsman considers necessary to disclose in order to establish grounds for the findings and recommendations in the report; and

(c) in the course of a prosecution for an offence under this Act, any matter required for purposes of the prosecution.

Due regard for exemptions.
21(3) When making a disclosure under subsection (2), the Ombudsman shall have due regard for the exemptions in this Act and shall take every reasonable precaution in order to avoid disclosure of any exempt information.

Defence under other Acts.
22 No person is guilty of an offence against any other Act of the Legislature by reason of complying with any request or requirement by the Ombudsman to furnish information or produce a record for the purpose of an investigation.

Enquêtes menées en privé
19 Toutes les enquêtes menées par l'Ombudsman sont privées.

Droit de présenter des observations
20 Au cours d'une enquête, l'Ombudsman doit donner au plaignant et au responsable du ministère concernés par la plainte, la possibilité de présenter leurs observations relativement à celle-ci.

Secret
21(1) L'Ombudsman est tenu au secret à l'égard de toutes les questions dont il prend connaissance dans le cadre d'une enquête.

Divulgation dans certains cas
21(2) Par dérogation au paragraphe (1), l'Ombudsman peut divulguer les renseignements suivants :

a) dans le cadre d'une enquête, toute question qu'il juge nécessaire de divulguer afin de faciliter l'enquête;

b) dans un rapport préparé en vertu de la présente loi, toute question qu'il juge nécessaire de divulguer afin de motiver les conclusions et les recommandations contenues dans le rapport;

c) dans le cadre d'une poursuite intentée pour une infraction à la présente loi, toute question requise pour les besoins de la poursuite

Prise en considération des exemptions
21(3) L'Ombudsman qui divulgue des renseignements en vertu du paragraphe (2) doit tenir compte des exemptions prévues à la présente loi et prendre toutes les précautions raisonnables afin d'éviter la divulgation de renseignements extraits d'un document.

Défense en vertu d'autres lois
22 Une personne n'est pas coupable d'une infraction à une autre loi de la Législature du fait qu'elle s'est conformée à une requête ou à une exigence de l'Ombudsman lui demandant de fournir des informations ou de produire un document aux fins d'une enquête.

Restrictions on evidence.

23 Except in a prosecution for an offence under this Act,

(a) no statement made in the course of an investigation by the Ombudsman is admissible against any person in a court or in any other proceeding;

(b) no report made by the Ombudsman under subsection 25(1) or 27(1), and no notification given by the Ombudsman under subsection 29(2), is admissible in a court or in any other proceeding; and

(c) the Ombudsman shall not be called to give evidence in a court or in any other proceeding concerning any matter which comes to the knowledge of the Ombudsman in the course of any investigation.

Report re Access Guide.

24 Where a complaint relates to the adequacy or availability of the Access Guide required to be published under this Act, the Ombudsman shall, upon completing the investigation, send to the complainant and to the designated minister a report containing the findings of the investigation and the recommendations, if any, which the Ombudsman considers appropriate in respect of the complaint.

Report re access complaint.

25(1) Where a complaint relates to

(a) the refusal by the head of a department to give an applicant access to a record; or

(b) an extension under section 11 of the 30 day limit for responding to an application;

the Ombudsman shall, upon completing the investigation, send to the applicant and to the head a report containing the findings of the investigation and the recommendations, if any, which the Ombudsman considers appropriate in respect of the complaint.

Notification re appeal right.

25(2) Where the complaint relates to the refusal by the head of a department to give an applicant access to a record and where the Ombudsman finds that the complaint is not justified, the Ombudsman shall state in the report

Restriction apportée à la preuve

23 Sauf dans les cas où une personne est poursuivie pour une infraction à la présente loi :

a) une déclaration faite dans le cadre d'une enquête menée par l'Ombudsman n'est pas admissible contre une personne devant un tribunal ni dans aucune autre procédure;

b) aucun rapport préparé par l'Ombudsman en vertu du paragraphe 25(1) ou 27(1) et aucun avis donné par celui-ci en vertu du paragraphe 29(2) ne sont recevables devant un tribunal ou dans toute autre instance; et

c) l'Ombudsman ne doit pas être appelé à témoigner devant un tribunal ni dans aucune autre procédure, à l'égard de toute question dont il prend connaissance dans le cadre d'une enquête.

Rapport concernant le guide d'accès à l'information

24 Si une plainte se rapporte à la pertinence ou à la disponibilité du guide d'accès à l'information devant être publié en vertu de la présente loi, l'Ombudsman doit, après avoir terminé son enquête, envoyer au plaignant et au ministre désigné un rapport contenant les conclusions de cette enquête ainsi que les recommandations qu'il juge indiquées à l'égard de la plainte.

Rapport concernant une plainte

25(1) Si une plainte se rapporte :

a) au refus du responsable d'un ministère d'accorder à un demandeur la communication d'un document; ou

b) à une prorogation du délai de 30 jours, prévue à l'article 11, afin de donner suite à une demande,

l'Ombudsman doit, après avoir terminé son enquête, envoyer au demandeur et au responsable un rapport contenant les conclusions de cette enquête ainsi que les recommandations qu'il juge indiquées à l'égard de la plainte.

Avis concernant le droit d'appel

25(2) Si la plainte se rapporte au refus du responsable d'un ministère d'accorder à un demandeur la communication d'un document et que l'Ombudsman ne conclut pas au bien-fondé de la plainte, ce dernier doit indiquer dans le rapport

sent to the applicant under subsection (1)

(a) the right of the applicant to appeal to the court for access to the record; and

(b) the time limit under subsection 30(1) for filing an appeal.

Response by head.

26 Where the report of the Ombudsman under subsection 25(1) contains any recommendations in respect of the complaint, the head of the department shall, within 14 days of receiving the report, send to the Ombudsman a written response indicating

(a) any action which the head has taken, or proposes to take, to implement the recommendations contained in the report; or

(b) reasons why the head refuses to take action to implement the recommendations contained in the report.

Report indicating departmental response.

27(1) Upon receiving the response of the head, the Ombudsman shall send to the applicant a report indicating the nature of the response.

Where access refused.

27(2) Where the report of the Ombudsman under subsection 25(1) recommends that the head give the applicant access to a record, and where the response of the head indicates that the head refuses to give the applicant access to the record, the Ombudsman shall state in the report sent to the applicant under subsection (1)

(a) the opinion of the Ombudsman as to whether or not the response of the head is justified by the provisions of this Act;

(b) the right of the applicant to appeal to the court for access to the record; and

(c) the time limit under subsection 30(1) for filing an appeal.

qui est envoyé au demandeur en application du paragraphe (1):

a) le droit du demandeur d'interjeter appel devant la Cour, afin d'obtenir la communication du document; et

b) le délai prévu au paragraphe 30(1) pour interjeter appel.

Réponse du responsable

26 Lorsque le rapport de l'Ombudsman, envoyé en application du paragraphe 25(1), contient des recommandations à l'égard de la plainte, le responsable du ministère doit, dans les 14 jours de la réception de ce rapport, faire parvenir à l'Ombudsman une réponse écrite indiquant:

a) les mesures qu'il a prises ou qu'il a l'intention de prendre afin de donner suite aux recommandations contenues dans le rapport; ou

b) les raisons pour lesquelles il refuse de prendre des mesures afin de donner suite aux recommandations contenues dans le rapport.

Rapport indiquant la réponse du ministère

27(1) Dès que l'Ombudsman reçoit la réponse du responsable, il doit envoyer au demandeur un rapport indiquant la nature de cette réponse.

Refus de communication d'un document

27(2) Si le rapport de l'Ombudsman, envoyé en application du paragraphe 25(1), recommande que le responsable accorde au demandeur la communication d'un document et que la réponse du responsable indique qu'il refuse au demandeur une telle communication, l'Ombudsman doit indiquer dans le rapport qui est envoyé au demandeur en application du paragraphe (1):

a) s'il est d'avis que la réponse du responsable est justifiée ou non par les dispositions de la présente loi;

b) le droit du demandeur d'interjeter appel devant la Cour, afin d'obtenir la communication du document; et

c) le délai fixé en vertu du paragraphe 30(1) pour interjeter appel.

Decision to allow access.
28 Where in the response under section 26, or at any other time after the filing of a complaint, the head of the department involved in the complaint indicates that the applicant will be given access to a record referred to in the complaint, the head shall, within 10 days, give the applicant access to the record.

Informal resolution of complaint.
29(1) Notwithstanding the procedures prescribed in sections 24 to 27, the Ombudsman may, in the course of or upon completing an investigation, undertake such other procedures as the Ombudsman deems appropriate for the purpose of resolving the complaint informally to the satisfaction of the parties thereto and in a manner consistent with the spirit of this Act.

Notification of appeal right.
29(2) Where the Ombudsman attempts but is unable to resolve in accordance with subsection (1) a complaint which relates to the refusal by the head of a department to give an applicant access to a record, the Ombudsman shall in writing notify the applicant of

(a) the right of the applicant to appeal to the court for access to the record; and

(b) the time limit under subsection 30(1) for filing an appeal.

Appeal by applicant.
30(1) An applicant who is refused access to a record and who has filed a complaint in respect thereof with the Ombudsman may appeal the refusal of access to the court by filing an originating notice of motion within 30 days of receiving the report of the Ombudsman under subsection 25(1) or subsection 27(1), or the notification referred to in subsection 29(2), as the case may be.

Extension of time for filing.
30(2) Prior to, or after, the expiry of the 30 day period referred to in subsection (1), and where special circumstances warrant, the court may extend the time for filing the appeal.

Décision d'accorder la communication d'un document
28 Le responsable du ministère concerné par la plainte doit accorder au demandeur la communication du document lorsqu'il indique, dans la réponse envoyée en application de l'article 26 ou à tout autre moment après le dépôt d'une plainte, que le demandeur obtiendra la communication d'un document mentionné dans la plainte. La communication du document est accordée dans les 10 jours suivant la réponse ou le dépôt de la plainte.

Règlement de la plainte sans formalités
29(1) Par dérogation aux procédures prévues aux articles 24 à 27, l'Ombudsman qui complète ou a complété une enquête peut entreprendre les autres procédures qu'il estime opportunes afin que la plainte soit réglée sans formalités, à la satisfaction des parties et d'une manière compatible avec l'esprit de la présente loi.

Avis du droit d'appel
29(2) L'Ombudsman qui tente de résoudre, conformément au paragraphe (1), une plainte se rapportant au refus du responsable d'un ministère d'accorder au demandeur la communication d'un document, mais qui est incapable de le faire, doit aviser par écrit le demandeur :

a) de son droit d'interjeter appel devant la Cour, afin d'obtenir la communication du document;

b) du délai fixé au paragraphe 30(1) pour interjeter appel.

Appel interjeté par le demandeur
30(1) Un demandeur qui s'est vu refuser la communication d'un document et qui a déposé une plainte à cet effet auprès de l'Ombudsman peut interjeter appel du refus devant la Cour, en déposant un avis introductif de requête dans un délai de 30 jours suivant la réception du rapport de l'Ombudsman, en application du paragraphe 25(1) ou 27(1) ou suivant l'avis prévu au paragraphe 29(2).

Prorogation du délai afin d'interjeter appel
30(2) La Cour peut proroger le délai pour interjeter appel avant ou après la fin du délai de 30 jours mentionné au paragraphe (1), lorsque des circonstances spéciales justifient la prorogation.

Head is respondent.
30(3) The head of the department involved in the complaint is the respondent in an appeal under this section.

Ombudsman not to be party.
30(4) The Ombudsman shall not be a party to an appeal under this section, and the Ombudsman shall not appeal any determination or decision made in respect of a complaint initiated by the Ombudsman under subsection 15(2).

Summary disposition.
31 The court may receive evidence by affidavit and may decide the appeal in a summary manner.

Production of records.
32 Notwithstanding any other Act of the Legislature or any privilege under the law of evidence, the court may, for purposes of disposing of an appeal under this Act, order production of any record in the custody or under the control of a department for examination by the court.

Procedures to avoid disclosure.
33 In disposing of an appeal under this Act, the court shall take every reasonable precaution, including, where appropriate, receiving representations ex parte and conducting hearings in camera, in order to avoid disclosure of any exempt information.

Burden of proof on department.
34 In any appeal under this Act, the burden of proof is on the head of the department to establish that the applicant has no right of access to the record under this Act.

Powers of court.
35(1) Upon completion of the appeal hearing, the court may, subject to this section,

Intimé
30(3) La personne responsable du ministère qui est concerné par la plainte est l'intimée dans un appel interjeté en application du présent article.

Ombudsman
30(4) L'Ombudsman n'est pas une partie à l'appel en vertu du présent article et ne doit pas interjeter appel d'une décision rendue à l'égard d'une plainte dont il a pris l'initiative en application du paragraphe 15(2).

Décision sommaire
31 La Cour peut recevoir la preuve au moyen d'un affidavit et statuer sur l'appel de façon sommaire.

Production de documents
32 Par dérogation à toute autre loi de la Législature ou à toute immunité reconnue par le droit de la preuve, la Cour peut ordonner, à des fins d'examen, la production de tout document sous la garde ou la responsabilité d'un ministère, afin de statuer sur un appel interjeté en vertu de la présente loi.

Procédures afin d'éviter la divulgation de renseignements
33 Lorsque la Cour statue sur un appel interjeté en vertu de la présente loi, elle doit prendre toutes les précautions possibles, notamment, si c'est indiqué, par l'audition d'arguments en l'absence d'une partie et la tenue d'audiences à huis clos, afin d'éviter la divulgation de renseignements privilégiés.

Charge de la preuve incombant au responsable
34 Dans le cas d'un appel interjeté en vertu de la présente loi, il incombe au responsable du ministère d'établir que le demandeur n'a pas droit à la communication d'un document en vertu de la présente loi.

Pouvoirs de la Cour
35(1) Dès que l'audition de l'appel est complétée et sous réserve du présent article, la Cour peut :

(a) order the head of the department to give the applicant access to the record, or refuse to make the order; or

(b) make such other order as the court deems appropriate.

Where record within exemption.

35(2) Where the court finds that the record in question falls within an exemption, the court shall not order the head to give the applicant access to the record, regardless of whether the exemption in question requires or merely authorizes the head to refuse to give the applicant access to the record.

Costs in certain cases.

35(3) Where the court is of the opinion that the appeal has raised an important new principle concerning the operation of this Act, the court shall order that costs be awarded to the applicant in any event of the cause.

No further appeal.

36 The decision of the court under section 35 is final and binding and there is no appeal therefrom.

Severability.

37 Notwithstanding any other provision of this Act, where the court finds that a record contains exempt information, the court shall order the head of the department to give the applicant access to all the information in the record which is not exempt and which can reasonably be severed from the exempt information.

Cabinet confidences.

38(1) Subject to subsection (2), the head of a department shall refuse to give access to any record which discloses a confidence of the Cabinet, including but not restricted to a record which discloses

(a) an agenda prepared for a Cabinet meeting; or

(b) policy analysis or similar briefing material prepared for consideration by the Cabinet; or

a) ordonner au responsable du ministère d'accorder au demandeur la communication du document ou refuser de rendre une telle ordonnance; ou

b) rendre une autre ordonnance qu'elle estime appropriée.

Document faisant l'objet d'une exemption

35(2) Lorsque la Cour conclut que le document visé au paragraphe (1) fait l'objet d'une exemption, elle ne peut ordonner au responsable d'accorder au demandeur la communication du document, que l'exemption en question exige que le responsable refuse d'accorder au demandeur la communication du document ou qu'elle ne fasse que l'autoriser à refuser cette communication.

Frais et dépens accordés dans certains cas

35(3) Lorsque la Cour estime que l'appel a soulevé un principe important et nouveau relativement à l'application de la présente loi, elle doit ordonner que les frais et dépens soient accordés au demandeur, en tout état de cause.

Décision définitive

36 La décision de la Cour, rendue en application de l'article 35, est définitive et exécutoire.

Renseignements non privilégiés extraits d'un document

37 Par dérogation à toute autre disposition de la présente loi, si la Cour est d'avis qu'un document contient des renseignements privilégiés, elle doit ordonner au responsable du ministère d'accorder au demandeur la communication de tous les renseignements non privilégiés qui sont contenus dans le document et qui peuvent être extraits sans problèmes sérieux.

Documents confidentiels du cabinet

38(1) Sous réserve du paragraphe (2), le responsable d'un ministère doit refuser la communication de tout document confidentiel du cabinet, notamment d'un document qui divulgue :

a) un ordre du jour préparé en vue d'une réunion du cabinet;

b) une analyse politique ou un document similaire soumis à l'examen du cabinet;

(c) a proposal or recommendation prepared, or reviewed and approved, by a minister for presentation to the Cabinet; or

(d) a communication or discussion between ministers on a matter relating to the making of a government decision or the formulation of government policy.

Right of access preserved.

38(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record which discloses a confidence of the Cabinet where

(a) the record is more than 30 years old; or

(b) the Cabinet for which, or in respect of which, the record has been prepared consents to access being given.

Policy opinions, advice or recommendations.

39(1) Subject to subsection (4), the head of a department may refuse to give access to any record which discloses

(a) an opinion, advice or a recommendation submitted by an officer or employee of a department, or a member of the staff of a minister, to a department or to a minister for consideration in

(i) the formulation of a policy, or

(ii) the making of a decision, or

(iii) the development of a negotiating position of or by the department or the government; or

(b) a plan relating to the administration of a department, including a plan relating to the management of personnel, which has not yet been implemented; or

(c) the contents of any draft enactment.

Limitation on exemption.

39(2) Clauses (1)(a) and (b) do not apply to

(a) an environmental impact statement or a similar statement prepared for a department which is responsible for monitoring environmental quality; or

(b) a report of a test carried out on a product for the purpose of testing government equipment or preparing a consumer test report; or

c) une proposition ou une recommandation qu'un ministre a préparée ou qu'il a révisée et approuvée, afin de la soumettre au cabinet; ou

d) une communication ou une discussion entre ministres sur une question liée à la prise d'une décision du gouvernement ou à la formulation de sa politique.

Droit de communication maintenu

38(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document confidentiel du cabinet, lorsque :

a) le document date de plus de 30 ans, ou

b) le Cabinet à l'égard duquel le document a été préparé consent à la communication de celui-ci.

Opinions, avis ou recommandations politiques

39(1) Sous réserve du paragraphe (4), le responsable d'un ministère peut refuser la communication d'un document qui divulgue :

a) une opinion, un avis ou une recommandation soumis à un ministère ou à un ministre par un cadre ou un employé d'un ministère ou par un membre du personnel d'un ministre, afin d'être examiné relativement à :

(i) la formulation d'une politique,

(ii) une décision à être prise, ou

(iii) la préparation portant sur des positions envisagées dans le cadre de négociations menées par le ministère ou le gouvernement; ou

b) un projet relatif à l'administration d'un ministère, notamment un projet concernant la gestion du personnel, qui n'a pas encore été mis en oeuvre; ou

c) le contenu d'un avant-projet d'un texte législatif.

Restriction apportée aux exemptions

39(2) Les alinéas (1)a) et b) ne s'appliquent pas :

a) à un compte rendu de l'impact sur l'environnement ou à un compte rendu semblable qui est préparé pour un ministère dont relève le contrôle de la qualité écologique;

b) à un rapport d'une analyse effectuée sur un produit afin de vérifier le matériel appartenant au gouvernement ou afin de préparer un rapport d'une analyse portant sur la consommation;

(c) the results of scientific or technical research undertaken in connection with the formulation of a policy proposal; or

(d) an instruction or guideline issued to the officers or employees of a department, or a substantive rule or statement of policy which has been adopted by a department, for the purpose of interpreting an enactment or administering a departmental program or activity which affects the public; or

(e) an account of, or a statement of the reasons for, a decision which is made in the exercise of a discretionary power or an adjudicative function and which affects the rights of the applicant; or

(f) a report prepared by a consultant who was not, at the time the report was prepared, an officer or employee of a department or a member of the staff of a minister.

c) aux résultats de recherches scientifiques ou techniques menées relativement à la formulation d'une proposition relative à une politique;

d) à des directives ou à un guide donnés aux cadres ou aux employés d'un ministère, ou à une règle de fond ou à une déclaration de principe adoptée par un ministère, afin d'interpréter un texte législatif ou de diriger un programme ministériel ou des activités de même nature, lesquels concernent le public;

e) à un compte rendu d'une décision qui est rendue dans l'exercice d'un pouvoir discrétionnaire ou d'une fonction judiciaire ou quasi-judiciaire et qui touche les droits du demandeur, ou à un exposé des raisons d'une telle décision; ou

f) à un rapport préparé par un conseiller qui n'était pas un cadre ou un employé d'un ministère ou un membre du personnel d'un ministre au moment où le rapport a été préparé.

Meaning of "report".

39(3) The term "report" in clause (2)(f) includes an evaluation of any departmental program of a non-commercial nature, but does not include an appraisal of the performance of any specific officer or employee of a department who is or was involved in administering a program.

Sens de l'expression "rapport"

39(3) L'expression "rapport", à l'alinéa (2)f), s'entend notamment d'une évaluation d'un programme ministériel de nature non commerciale, mais non d'une évaluation de l'exercice des fonctions d'un cadre ou d'un employé particulier d'un ministère qui est ou était engagé dans l'administration d'un programme.

Right of access preserved.

39(4) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the record is more than 30 years old.

Droit de communication maintenu

39(4) Sous réserve des autres exemptions à la présente loi, le responsable d'un ministère doit accorder la communication d'un document décrit au paragraphe (1), lorsque ledit document date de plus de 30 ans.

Law enforcement and legal proceedings.

40(1) The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected

(a) to be injurious either to the enforcement of an enactment or to the conduct of an investigation under an enactment; or

(b) to facilitate the commission of an offence or to threaten the security of a correctional institution or other building, a computer or communications system, or any other property or system; or

Respect de la loi et procédures légales

40(1) Le responsable d'un ministère peut refuser la communication de tout document dont la divulgation risquerait vraisemblablement :

a) de nuire aux activités destinées à faire respecter les textes législatifs ou de nuire au déroulement d'une enquête menée sous le régime de ces textes;

b) de faciliter la perpétration d'une infraction ou de menacer la sécurité d'un établissement pénitentiaire ou d'un autre bâtiment, d'un réseau ou système informatisé ou de communications, ou de tout autre bien, réseau ou système;

(c) to violate solicitor-client privilege; or
(d) to be injurious to the conduct of existing or anticipated legal proceedings.

Limitation on exemption.
40(2) Subsection (1) does not apply to a record which
(a) discloses the use of investigative or enforcement techniques or procedures which are contrary to law; or
(b) reveals that the scope of any law enforcement investigation has exceeded the limits of the law; or
(c) provides a general outline of the structure or programs of a law enforcement agency; or
(d) reports, by means of statistical analysis or otherwise, on the degree of success achieved in a law enforcement program.

Protection of personal privacy.
41(1) Subject to subsections (3) and (5), the head of a department shall refuse to give access to any record the disclosure of which would constitute an unreasonable invasion of the privacy of a third party, including but not restricted to a record which discloses
(a) personal details of the educational, medical, criminal, employment or family history of the third party; or
(b) personal details of a taxation matter, financial transaction or other pecuniary matter in which the third party is or has been involved; or
(c) the identity of a third party who has supplied information in confidence to a department for any purpose related to the administration or enforcement of an enactment.

Limitation on exemption.
41(2) Subsection (1) does not apply to a record which
(a) discloses the classification, salary range and benefits, or employment responsibilities of a third party who is or was an officer or employee of a department or a member of the staff of a minister; or

c) de violer le secret professionnel de l'avocat; ou
d) de nuire au déroulement de procédures légales actuelles ou envisagées.

Restriction apportée aux exemptions
40(2) Le paragraphe (1) ne s'applique pas à un document :
a) qui divulgue l'utilisation de techniques ou de procédures d'enquête ou d'exécution contraires à la loi;
b) qui révèle que la portée d'une enquête relative à la mise en application d'une loi a outrepassé les limites de la loi;
c) qui fournit une idée générale de la structure ou des programmes d'un organisme de mise en application des lois; ou
d) qui rend compte, au moyen d'analyses statistiques ou autrement, du degré de succès obtenu dans le cadre d'un programme de mise en application des lois.

Protection de la vie privée
41(1) Sous réserve des paragraphes (3) et (5), le responsable d'un ministère doit refuser la communication d'un document dont la divulgation constituerait une atteinte déraisonnable à la vie privée d'un tiers, notamment un document qui divulgue :
a) les renseignements personnels relatifs à l'éducation, au dossier médical, au casier judiciaire, aux antécédents professionnels ou familiaux du tiers;
b) les renseignements personnels relatifs à une affaire fiscale et à une opération ou une autre affaire financière auxquelles le tiers participe ou a participé; ou
c) l'identité d'un tiers qui a fourni à un ministère, à titre confidentiel, des renseignements pour des fins se rapportant à la mise en application ou à l'exécution d'un texte législatif.

Restriction apportée aux exemptions
41(2) Le paragraphe (1) ne s'applique pas à un document :
a) qui divulgue la classification, l'échelle salariale et les avantages sociaux ou les attributions d'emploi d'un tiers qui est ou qui était un cadre ou un employé d'un ministère ou un membre du personnel d'un ministre;

(b) discloses financial or other details of a contract for personal services between a third party and a department; or

(c) discloses details of a licence or permit, or a similar discretionary financial benefit, conferred on a third party by a department or minister, but only where

(i) the third party represents 1% or more of all persons and organizations in Manitoba receiving a similar benefit, and

(ii) the value of the benefit to the third party represents 1% or more of the total value of similar benefits provided to other persons and organizations in Manitoba.

b) qui divulgue des renseignements, notamment des renseignements financiers, relatifs à un contrat de prestation de services personnels conclu entre un tiers et un ministère; ou

c) qui divulgue des renseignements relatifs à la délivrance d'une licence ou d'un permis ou relatif à des avantages financiers discrétionnaires de même nature, accordés à un tiers par un ministère ou un ministre, uniquement :

(i) lorsque le tiers représente au moins 1% de toutes les personnes et organisations du Manitoba qui reçoivent un avantage semblable, et

(ii) lorsque la valeur de l'avantage accordé au tiers représente au moins 1% de la valeur totale des avantages semblables accordés à d'autres personnes et organisations du Manitoba.

Right of access preserved.

41(3) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where

(a) the third party consents to access being given; or

(b) the record is publicly available; or

(c) the third party is an individual who has been dead for more than 10 years.

Droit de communication maintenu

41(3) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document décrit au paragraphe (1), lorsque :

a) le tiers qui est concerné y consent;

b) le public a accès au document; ou

c) le tiers est décédé depuis plus de 10 ans.

Access with consent of third party.

41(4) Where an applicant is entitled to be given access to a record described in subsection (1) by virtue of the consent of the third party, the head of the department which has custody or control of the record may

(a) prior to giving access to the applicant, require a written acknowledgement or other evidence of informed consent from the third party; and

(b) comply with the requirement to give access by giving access directly to the third party rather than the applicant.

Consentement du tiers

41(4) Lorsqu'un demandeur a droit de recevoir la communication d'un document décrit au paragraphe (1) en vertu du consentement du tiers, le responsable du ministère qui a la garde ou la responsabilité du document peut :

a) avant d'accorder la communication du document au demandeur, exiger du tiers une attestation écrite ou une autre preuve de son consentement éclairé; et

b) se soumettre à l'obligation de communication d'un document en accordant directement la communication de celui-ci au tiers plutôt qu'au demandeur.

Access for research purposes.

41(5) Subject to the other exemptions in this Act, the head of a department may give any person or organization access to a record described in subsection (1) for bona fide research or statistical purposes if

Communication à des fins de recherche

41(5) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère peut accorder à toute personne ou organisation la communication d'un document décrit au paragraphe (1), à des fins de recherche ou de statistique de bonne foi :

(a) the head is satisfied that the research or statistical purpose cannot reasonably be achieved unless the record is provided in a form which identifies the third party; and
(b) the head obtains from the person or organization a written undertaking not to disclose the contents of the record in any form which could reasonably be expected to identify the third party.

a) si le responsable est convaincu que les fins de recherche ou de statistique ne peuvent être normalement accomplies que si le document est fourni sous une forme qui permette l'identification du tiers; et
b) si la personne ou l'organisation s'engage par écrit auprès du responsable à ne pas divulguer le contenu du document tant que la forme de celui-ci risque vraisemblablement de permettre l'identification du tiers.

Commercial information belonging to third party.
42(1) Subject to this section, the head of a department shall refuse to give access to any record
(a) which discloses a trade secret of a third party; or
(b) which discloses financial, commercial, scientific or technical information supplied to a department by a third party on a confidential basis and treated consistently as confidential information by the third party; or
(c) the disclosure of which could reasonably be expected to
(i) result in significant financial loss or gain to a third party, or
(ii) prejudice the competitive position of a third party, or
(iii) interfere with contractual or other negotiations of a third party.

Renseignements commerciaux appartenant à un tiers
42(1) Sous réserve du présent article, le responsable d'un ministère doit refuser d'accorder la communication d'un document :
a) qui divulgue un secret industriel d'un tiers;
b) qui divulgue des renseignements financiers, commerciaux, scientifiques ou techniques fournis confidentiellement à un ministère par un tiers et qui sont traités comme des renseignements confidentiels par ce tiers; ou
c) dont la divulgation risquerait vraisemblablement :
(i) de causer des pertes ou profits financiers considérables à un tiers, ou
(ii) de nuire à la compétitivité du tiers, ou
(iii) d'entraver des négociations menées par un tiers en vue de contrats ou à d'autres fins.

Right of access preserved.
42(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where
(a) the record discloses the final results of a product or environmental test conducted by or on behalf of a department, unless the test was conducted for a fee paid by the third party; or
(b) the third party consents to access being given; or
(c) the record is publicly available.

Droit de communication maintenu
42(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document décrit au paragraphe (1), lorsque :
a) le document divulgue les résultats définitifs d'essais de produits ou d'essais d'environnement effectués par un ministère ou pour son compte, sauf si les essais ont été effectués à titre onéreux et payés par le tiers;
b) le tiers qui est concerné y consent; ou
c) le public a accès aux documents.

Access with consent of third party.
42(3) Where an applicant is entitled to be given access to a record described in subsection (1) by virtue of the consent of the third party, the head of the department which has custody or control of the record may

Consentement du tiers
42(3) Lorsqu'un demandeur a droit de recevoir la communication d'un document décrit au paragraphe (1) en vertu du consentement du tiers, le responsable du ministère qui a la garde ou la responsabilité du document peut :

(a) prior to giving access to the applicant, require a written acknowledgement or other evidence of informed consent from the third party; and

(b) comply with the requirement to give access by giving access directly to the third party rather than the applicant.

Disclosure in public interest.

42(4) Subject to subsections (5) to (7) and the other exemptions in this Act, the head of a department may give access to a record described in subsection (1) where the private interest of the third party in non-disclosure is clearly outweighed by the public interest in disclosure for purposes of

(a) health, safety or environmental protection;

(b) improved competition; or

(c) government regulation of undesirable trade practices.

Notification to third party and applicant.

42(5) Prior to giving access to a record under subsection (4), the head shall

(a) notify the third party of the decision to give access and give the third party a reasonable opportunity to make representations respecting the decision; and

(b) notify the applicant that the head is acting in accordance with clause (a).

Reference to court.

42(6) Where the third party objects to the giving of access, the applicant may, within 30 days of receiving the notification referred to in clause (5)(b) or within such further time as the court may allow, apply to the court by originating notice of motion for an order authorizing the head to give the applicant access to the record; and sections 31 to 33 apply with necessary modifications to the hearing of the matter.

a) avant d'accorder la communication du document au demandeur, exiger du tiers une attestation écrite ou une autre preuve de son consentement éclairé; et

b) se soumettre à l'obligation de communication d'un document en accordant directement la communication de celui-ci au tiers plutôt qu'au demandeur.

Divulgation pour des raisons d'intérêt public

42(4) Sous réserve des paragraphes (5) à (7) et des autres exemptions prévues à la présente loi, le responsable d'un ministère peut accorder la communication d'un document décrit au paragraphe (1), lorsque des raisons d'intérêt public justifient nettement les conséquences éventuelles de la communication pour un tiers, lesquelles raisons d'intérêt public concernent :

a) la santé, la sécurité ou la protection de l'environnement;

b) le développement de la concurrence; ou

c) la réglementation du gouvernement relative aux pratiques industrielles non souhaitables.

Avis au tiers et au demandeur

42(5) Avant d'accorder la communication d'un document en application du paragraphe (4), le responsable doit :

a) aviser le tiers de la décision d'accorder une telle communication et donner à celui-ci la possibilité de faire des observations relativement à la décision; et

b) aviser le demandeur qu'il agit conformément à l'alinéa a).

Renvoi devant la Cour

42(6) Si le tiers s'oppose à la communication d'un document, le demandeur peut, dans les 30 jours de la réception de l'avis mentionné à l'alinéa (5)b) ou dans tout délai supplémentaire que la Cour peut accorder, s'adresser à celle-ci au moyen d'un avis introductif de requête afin d'obtenir une ordonnance autorisant le responsable à lui accorder la communication du document. Les articles 31 à 33 s'appliquent, avec les adaptations nécessaires, à l'audition de l'affaire.

Court decides issue.

42(7) Where the court, upon hearing an application under subsection (6), decides that the public interest in disclosure referred to in subsection (4) clearly outweighs the private interest of the third party in non-disclosure, the court shall issue an order authorizing the head to give the applicant access to the record; and the decision of the court under this subsection is final and binding and there is no appeal therefrom.

Economic interests of Manitoba.

43 The head of a department may refuse to give access to any record

(a) which discloses a trade secret of a department or the government; or

(b) which discloses innovative scientific or technical research done by an officer or employee of a department; or

(c) the disclosure of which could reasonably be expected to prejudice the competitive position of a department or the government, or to interfere with contractual or other negotiations of a department or the government; or

(d) the disclosure of which could reasonably be expected to injure significantly the financial interests of a department or the government, or to result in undue gain to any person or organization, including but not restricted to a record which discloses

(i) a contemplated change in taxes or any other source of revenue, or

(ii) a contemplated change in government borrowing, or

(iii) a contemplated change in the conditions of operation of any financial institution, stock exchange, or commodities exchange, or of any self-regulating association recognized by The Manitoba Securities Commission under any provincial enactment, or

(iv) a contemplated sale or purchase of securities, bonds or foreign or Canadian currency, or

Délivrance d'une ordonnance décidée par la Cour

42(7) Suite à l'audition d'une demande en vertu du paragraphe (6), la Cour doit délivrer une ordonnance autorisant le responsable à accorder au demandeur la communication du document, si elle conclut que des raisons d'intérêt public mentionnées au paragraphe (4) justifient nettement les conséquences éventuelles de la communication pour un tiers. La décision de la Cour, rendue en application du présent paragraphe, est définitive, exécutoire et ne peut faire l'objet d'aucun appel.

Intérêts économiques du Manitoba

43 Le responsable d'un ministère peut refuser la communication d'un document :

a) qui divulgue un secret industriel d'un ministère ou du gouvernement;

b) qui divulgue une recherche scientifique ou technique innovatrice, effectuée par un cadre ou un employé d'un ministère;

c) dont la divulgation risquerait vraisemblablement de nuire à la compétitivité d'un ministère ou du gouvernement ou d'entraver des négociations menées par un ministère ou par le gouvernement en vue de contrats ou à d'autres fins; ou

d) dont la divulgation risquerait vraisemblablement de porter un préjudice considérable aux intérêts financiers d'un ministère ou du gouvernement ou de causer des avantages injustifiés à une personne ou à une organisation. Ce document peut notamment porter sur :

(i) les projets de changement des taxes ou de toute autre source de revenu, ou

(ii) les projets de changement des emprunts du gouvernement, ou

(iii) les projets de changement dans le mode de fonctionnement des institutions financières, de la Bourse, de la Bourse de marchandises ou de toute association qui établit ses propres règles et qui est reconnue par la Commission des valeurs mobilières du Manitoba, en vertu d'un texte législatif provincial, ou

(iv) les projets de vente ou d'achat de valeurs mobilières, d'obligations ou de devises canadiennes ou étrangères, ou

(v) a contemplated sale, purchase, lease or expropriation of land or other property, or
(vi) a contemplated designation of an archaeological, historical, heritage or similar site.

Federal-provincial relations.
44 The head of a department may refuse to give access to any record the disclosure of which could reasonably be expected to be injurious to the conduct by the government of federal-provincial relations.

Information obtained in confidence.
45(1) Subject to subsection (2), the head of a department shall refuse to give access to any record obtained in confidence from
(a) the government of Canada or a department thereof; or
(b) the government of any other province or a department thereof; or
(c) a municipal or regional government, a school division or school district, or any other local authority established by or in accordance with an enactment of any province, or a department of any such local authority.

Right of access preserved.
45(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the government, local authority or department from which the record was obtained
(a) consents to the giving of access; or
(b) makes the information public.

Testing or auditing procedures.
46 The head of a department may refuse to give access to any record which discloses testing or auditing procedures or techniques, or details of specific tests to be given or audits to be conducted, if the disclosure could reasonably be expected to prejudice the use or results of particular tests or audits.

(v) les projets de vente, d'achat, de bail ou d'expropriation portant sur des terrains ou d'autres biens, ou
(vi) les projets de désignation d'un site archéologique, historique, patrimonial ou d'un site de même nature.

Relations fédérales-provinciales
44 Le responsable d'un ministère peut refuser la communication d'un document dont la divulgation risquerait vraisemblablement de porter préjudice à la conduite par le gouvernement des relations fédérales-provinciales.

Renseignements obtenus à titre confidentiel
45(1) Sous réserve du paragraphe (2), le responsable d'un ministère doit refuser d'accorder la communication d'un document obtenu à titre confidentiel des entités suivantes :
a) le gouvernement du Canada ou un de ses ministères;
b) le gouvernement de toute autre province ou un de ses ministères; ou
c) une administration municipale ou régionale, une division ou un district scolaire ou toute autre autorité locale constituée en vertu d'un texte législatif d'une province, ou un bureau de cette autorité locale.

Droit de communication maintenu
45(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document prévu au paragraphe (1) si le gouvernement, l'autorité locale ou le bureau qui a fourni le document :
a) consent à la communication; ou
b) rend les renseignements publics.

Examens ou vérifications
46 Le responsable d'un ministère peut refuser la communication d'un document qui divulgue certaines opérations, soit des essais, épreuves, examens ou vérifications ou les méthodes et techniques employées pour les effectuer, si la divulgation de celles-ci risquerait vraisemblablement de nuire à l'exploitation de ces opérations ou de fausser leurs résultats.

Material to be made public.
47 The head of a department may refuse to give access to any record which the head believes on reasonable grounds will be published or otherwise made available to the public by the government, a department or a minister within 90 days.

Third party reports.
48(1) Subject to subsection (2), the head of a department may refuse to give access to any record which was made prior to the coming into force of this section and which discloses a report prepared, or an opinion expressed, about the applicant by a third party, including a third party who is or was an officer or employee of a department or a member of the staff of a minister.

Right of access preserved.
48(2) Subject to the other exemptions in this Act, the head of a department shall give access to a record described in subsection (1) where the third party consents to access being given.

Excerpted summary.
48(3) Where the head refuses to give access to a record under subsection (1), the head may provide the applicant with an excerpted summary of the report or opinion of the third party.

Preparation of summary.
48(4) Where an excerpted summary is provided under subsection (3), it shall be prepared by the third party, if the third party is available and willing to do so, but otherwise it shall be prepared as directed by the head.

Physical or serious psychological harm.
49 The head of a department may refuse to give access to any record where there are reasonable grounds to believe that disclosure of the record might result in

Contenu du document devant être rendu public
47 Le responsable d'un ministère peut refuser d'accorder la communication d'un document s'il est fondé à croire que ledit document sera publié dans les 90 jours suivant la demande ou que le gouvernement, un ministère ou un ministre le mettra autrement à la disposition du public dans un tel délai.

Rapports des tiers
48(1) Sous réserve du paragraphe (2), le responsable d'un ministère peut refuser la communication d'un document qui a été préparé avant l'entrée en vigueur du présent article et qui divulgue un rapport qu'un tiers a préparé au sujet du demandeur ou une opinion qu'il a exprimée à son endroit, y compris le rapport et l'opinion d'un tiers qui est ou qui était un cadre ou un employé d'un ministère ou un membre du personnel d'un ministre.

Droit de communication maintenu
48(2) Sous réserve des autres exemptions prévues à la présente loi, le responsable d'un ministère doit accorder la communication d'un document prévu au paragraphe (1) si le tiers y consent.

Résumé extrait du rapport ou de l'opinion
48(3) Le responsable qui refuse la communication d'un document en vertu du paragraphe (1) peut fournir au demandeur un résumé extrait du rapport ou de l'opinion du tiers.

Préparation du résumé
48(4) Un résumé extrait du rapport ou de l'opinion d'un tiers, fourni en vertu du paragraphe (3), est préparé par le tiers si celui-ci est disponible et disposé à le préparer. Autrement, le rapport doit être préparé selon la manière qu'indique le responsable.

Dommages physiques ou graves troubles psychologiques
49 Le responsable d'un ministère peut refuser la communication d'un document lorsqu'il existe des motifs raisonnables permettant de croire que la divulgation du document pourrait causer :

(a) physical or serious psychological harm to the applicant or, in the case of a record which discloses information about a third party, to the third party; or

(b) physical harm to any other person.

Access Guide.

50 The designated minister shall cause to be published an Access Guide containing

(a) instructions on exercising the right of access conferred by this Act, including

(i) a summary of the procedures for submitting applications, filing complaints and making appeals,

(ii) a completed sample copy of the form prescribed for applications, and

(iii) a statement of the fees payable for access to records,

(b) a list indicating the personnel involved in the administration of this Act and appropriate departmental facilities, including

(i) the address and telephone number of each departmental office which receives applications,

(ii) the name, address and telephone number of the access officer or officers in each department, and

(iii) the physical facilities available in each department for examining records and obtaining copies of records;

(c) a description of the organizational structure of each department, including a reference to any internal indexes used by the department to manage its records;

(d) a description of the records in the custody or under the control of each department, including

(i) the title of every group or class of records,

(ii) a functional description of every group or class of records, and

(iii) details concerning the retention, disposition and, where applicable, destruction of a group or class of records as contained in the appropriate Schedule prepared and approved under The Legislative Library Act;

a) des dommages physiques ou de graves troubles psychologiques au demandeur ou à un tiers, dans le cas d'un document qui divulgue des renseignements au sujet du tiers; ou

b) des dommages physiques à toute autre personne.

Guide d'accès à l'information

50 Le ministre désigné doit faire publier un guide d'accès à l'information contenant :

a) des directives relatives à l'exercice du droit de communication accordé par la présente loi, notamment :

(i) un résumé des procédures à suivre afin de présenter une demande, de déposer une plainte et d'interjeter appel,

(ii) un modèle de la formule prescrite relativement aux demandes et qui a été rempli, et

(iii) le droit payable pour la communication de documents;

b) une liste indiquant le personnel responsable de l'application de la présente loi et des installations ministérielles appropriées, notamment :

(i) l'adresse et le numéro de téléphone de chaque service ministériel qui reçoit des demandes,

(ii) le nom, l'adresse et le numéro de téléphone des agents d'information de chaque ministère, et

(iii) les installations disponibles dans chaque ministère pour la consultation de documents et l'obtention de copies de ceux-ci;

c) une description de l'organisation de chaque ministère, y compris un renvoi à tout index interne utilisé par le ministère afin d'administrer ses dossiers;

d) une description des documents sous la garde ou la responsabilité de chaque ministère, notamment :

(i) le titre de chaque groupe ou catégorie de documents,

(ii) une description fonctionnelle de chaque groupe ou catégorie de documents, et

(iii) des renseignements concernant la conservation, la disposition et s'il y a lieu, la destruction d'un groupe ou d'une catégorie de documents tels qu'ils sont contenus dans l'annexe préparé et approuvé à cette fin en vertu de la Loi sur la bibliothèque de la Législature;

(e) a subject index of terms describing the functions of departments and referring by number to the appropriate records relating to those functions; and
(f) a copy of this Act and the regulations.

Availability of Access Guide.
51 The designated minister shall cause a copy of the Access Guide to be made available
(a) in every departmental office which receives applications;
(b) in every public reading area of a departmental office; and
(c) in such other departmental offices, public libraries, and municipal offices as the designated minister deems appropriate.

Updating of Access Guide.
52 The designated minister shall cause to be published and distributed, at intervals of 2 years or less, supplements or replacements in an appropriate format for the purpose of keeping the Access Guide up to date.

Other duties and functions.
53 The designated minister
(a) shall, in order to facilitate access to records, cause to be kept under review the administration of this Act and the regulations within the departments; and
(b) may cause to be prepared and distributed to departments guidelines concerning the operation of this Act and the regulations.

Annual report of designated minister.
54(1) The designated minister shall report annually to the Speaker of the assembly on the administration of this Act and the regulations within each department during the year, and the Speaker shall cause the report to be laid before the assembly forthwith if the assembly is in session and if the assembly is not in session, within 15 days of the beginning of the next ensuing session.

e) un index des matières des termes qui décrivent les fonctions des ministères et qui renvoient, par numéros, aux documents se rapportant à ces fonctions; et
f) une copie de la présente loi et des règlements.

Diffusion du guide d'accès à l'information
51 Le ministre désigné est responsable de la diffusion d'une copie du guide d'accès à l'information :
a) dans tout service ministériel qui reçoit des demandes;
b) dans tout lieu de lecture public d'un service ministériel; et
c) dans les autres services ministériels, les bibliothèques municipales et les bureaux municipaux que le ministre désigné juge appropriés.

Mise à jour du guide d'accès à l'information
52 Afin de mettre à jour le guide d'accès à l'information, le ministre désigné doit faire publier et distribuer, à intervalles d'au plus 2 ans, des suppléments au guide ou de nouvelles pages, sous un format approprié.

Autres responsabilités
53 Le ministre désigné
a) doit, afin de faciliter la communication des documents, voir au contrôle de l'application de la présente loi et des règlements à l'intérieur des ministères; et
b) peut faire préparer et distribuer à l'intention des ministères des directives concernant l'application de la présente loi et des règlements.

Rapport annuel du ministre désigné
54(1) Le ministre désigné doit présenter à l'Orateur de l'Assemblée un rapport annuel relatif à l'application de la présente loi et des règlements à l'intérieur de chaque ministère pendant l'année. L'Orateur doit faire déposer immédiatement le rapport devant l'Assemblée, si celle-ci est en session et si l'Assemblée ne siège pas, dans les 15 jours suivant le début de la session suivante.

Proceedings against Ombudsman prohibited.
58 No proceeding lies against the Ombudsman, or any person employed by or acting under the authority of the Ombudsman, for anything done, reported or said in good faith in the exercise or performance, or intended exercise or performance, of the powers, duties and functions of the Ombudsman under this Act.

Proceedings against government prohibited.
59 No proceeding lies against the head of a department, any access officer or other officer or employee of a department, or the government or any department, for

(a) the giving of access in good faith to any record under this Act; or

(b) any consequences which flow from such access; or

(c) the failure to give any notice required under this Act, if reasonable care was taken to give the required notice.

Obstruction.
60 Every person who without lawful justification

(a) willfully obstructs, hinders, or resists any other person in the exercise or performance of that other person's powers, duties or functions under this Act; or

(b) refuses or willfully fails to comply with any lawful request or other requirement of any other person under this Act; or

(c) willfully makes any false statement to, or willfully misleads or attempts to mislead, any other person in the exercise or performance of that other person's powers, duties or functions under this Act;

is guilty of an offence punishable by summary conviction.

Act inapplicable to certain records.
61 This Act does not apply to

(a) any record which is published or available for purchase by the public; or

Interdiction de procédures contre l'Ombudsman
58 Aucune procédure ne doit être intentée contre l'Ombudsman ou contre toute personne employée par celui-ci ou agissant sur son ordre, pour les actes accomplis, les rapports ou comptes rendus établis ou les paroles prononcées de bonne foi dans l'accomplissement effectif ou projeté des pouvoirs et fonctions qui lui sont conférés en vertu de la présente loi.

Interdiction de procédures contre le gouvernement
59 Aucune procédure ne doit être intentée contre le responsable d'un ministère, un agent d'information ou un autre cadre ou employé d'un ministère, le gouvernement ou tout ministère, relativement :

a) à la communication d'un document faite de bonne foi dans le cadre de la présente loi,

b) à toute conséquence qui découle d'une telle communication; ou

c) au défaut de donner les avis prévus par la présente loi, si les personnes mentionnées ci-dessus ont fait preuve de la diligence nécessaire

Entrave
60 Est coupable d'une infraction punissable sur déclaration sommaire de culpabilité toute personne qui, sans justification légale :

a) entrave délibérément l'action de toute autre personne dans l'accomplissement de ses pouvoirs ou fonctions qui lui sont conférés en vertu de la présente loi, ou résiste à une telle action;

b) refuse ou omet délibérément de se soumettre à une requête légale ou à une autre exigence de toute autre personne, lesquelles sont prévues par la présente loi; ou

c) fait délibérément une fausse déclaration à toute autre personne dans l'accomplissement de ses pouvoirs ou fonctions qui lui sont conférés en vertu de la présente loi, ou trompe ou tente de tromper ladite personne.

Inapplication de la loi à l'égard de certains documents
61 La présente loi ne s'applique pas :

a) à un document qui est publié ou mis en vente dans le public;

Contents of report.
54(2) The annual report of the designated minister shall provide details of

(a) the number of applications received by each department during the year;

(b) the number of times during the year that the head of each department refused to give access to a record, and the specific provisions of this Act upon which the refusals to give access were based; and

(c) the fees charged and collected by each department for access to records during the year.

Annual report of Ombudsman.
55 The Ombudsman shall report annually to the Speaker of the assembly on the exercise and performance of the powers, duties and functions of the Ombudsman under this Act, and the Speaker shall cause the report to be laid before the assembly forthwith if the assembly is in session and if the assembly is not in session, within 15 days of the beginning of the next ensuing session.

Review by committee.
56 Within 3 years after the coming into force of this section, such committee of the assembly as the assembly may designate or establish for the purpose shall undertake a comprehensive review of the operation of this Act and shall, within 1 year after the review is undertaken or within such further time as the assembly may allow, submit to the assembly a report on the operation of this Act, including any amendments to the Act which the committee recommends.

Delegation to access officers.
57(1) The head of a department may by written authorization designate one or more officers or employees of the department to be access officers for the purpose of exercising or performing such powers, duties and functions of the head under this Act as the head may specify in the authorization.

Effect of delegation.
57(2) Any action or decision of an access officer acting within the scope of the authorization referred to in subsection (1) shall, for purposes of this Act, be conclusively deemed to be the action or decision of the head.

Contenu du rapport
54(2) Le rapport annuel du ministre désigné doit fournir des indications concernant :

a) le nombre de demandes reçues pendant l'année par chaque ministère;

b) le nombre de demandes de communication d'un document refusées pendant l'année par le responsable de chaque ministère, ainsi que les dispositions précises de la présente loi sur lesquelles les refus de communication ont été fondés; et

c) les droits demandés et perçus pendant l'année par chaque ministère pour la communication de documents.

Rapport annuel de l'Ombudsman
55 L'Ombudsman doit présenter à l'Orateur de l'Assemblée un rapport annuel relatif à l'exercice de ses pouvoirs et fonctions prévus par la présente loi. L'Orateur doit faire déposer immédiatement le rapport devant l'Assemblée, si celle-ci est en session et si l'Assemblée ne siège pas, dans les 15 jours suivant le début de la session suivante.

Révision par le comité
56 Dans les 3 ans après l'entrée en vigueur du présent article, le comité de l'Assemblée que celle-ci désigne ou constitue pour les fins ci-après mentionnées, doit entreprendre une révision détaillée de l'application de la présente loi. Le comité doit, dans un délai d'un an après que la révision soit entreprise ou dans tout délai supplémentaire que l'Assemblée accorde, soumettre à celle-ci un rapport relatif à l'application de la présente loi, y compris les modifications à la Loi qu'il recommande.

Délégation aux agents d'information
57(1) Le responsable d'un ministère peut, par autorisation écrite, désigner des cadres ou des employés du ministère à titre d'agents d'information afin de remplir, en vertu de la présente loi, ses pouvoirs et ses fonctions qu'il peut préciser dans l'autorisation.

Effet de la délégation
57(2) Toute action ou décision d'un agent d'information agissant selon la portée de l'autorisation visée au paragraphe (1) est réputée de façon concluante être celle du responsable, pour les besoins de la présente loi.

(b) any record contained in a library or museum solely for purposes of public reference or exhibition; or

(c) a private record placed in the Provincial Archives, the Legislative Library or the Manitoba Museum of Man and Nature by or on behalf of any person or organization other than a department.

Regulations.

62 For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make regulations ancillary thereto and not inconsistent therewith; and every regulation made under, and in accordance with the authority granted by, this section has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations not inconsistent with this Act

(a) prescribing the forms to be used for applications and complaints;

(b) prescribing the fees payable for access to records;

(c) specifying the procedures to be followed in taking and processing applications within individual departments;

(d) specifying the manner or place in which access to records shall be given within individual departments; and

(e) prescribing such other procedures as may be necessary for the proper administration of this Act.

Act binding on Crown.

63 This Act is binding on Her Majesty in right of Manitoba.

Other access rights preserved.

64(1) Subject to subsection (4), nothing in this Act or the regulations, including the exemption in section 48, shall be interpreted to restrict or extinguish

(a) any custom or practice; or

(b) any right or privilege, whether created by another Act of the Legislature, a regulation thereunder, or otherwise;

b) à un document qui se trouve dans une bibliothèque ou un musée, uniquement à des fins de référence ou d'exposition pour le public; ou

c) à un document privé qui est déposé aux Archives provinciales, à la bibliothèque de la Législature ou au musée de l'Homme et de la Nature du Manitoba, par ou pour toute personne ou organisation extérieure à un ministère.

Règlements

62 Le lieutenant-gouverneur en conseil peut prendre des règlements d'application compatibles avec la présente loi et conformes à son esprit; ces règlements ont force de loi. Il peut notamment, par règlement :

a) prescrire les formules devant être utilisées relativement aux demandes et aux plaintes;

b) fixer les droits payables pour la communication des documents;

c) déterminer les procédures devant être suivies relativement aux demandes reçues et traitées à l'intérieur de chaque ministère;

d) déterminer les modalités d'exercice de l'accès aux documents ou le lieu de leur consultation, à l'intérieur de chaque ministère; et

e) prescrire toute autre procédure nécessaire pour l'application adéquate de la présente loi.

La Couronne est liée

63 La présente loi lie Sa Majesté du chef du Manitoba.

Autres droits de communication maintenus

64(1) Sous réserve du paragraphe (4), aucune disposition de la présente loi ou des règlements, y compris l'exemption prévue à l'article 48, ne doit être interprétée de façon à restreindre ou à éteindre :

a) une coutume ou une pratique; ou

b) un droit ou un privilège, qu'il soit créé par une autre loi de la Législature, un règlement pris en vertu de cette loi, ou d'une autre façon,

whereby any person, including a public officer acting in the course or scope of duty, is authorized to gain access to any record, or any group or class of records, in the custody or under the control of a department.

When access right arises
64(2) Subsection (1) applies regardless of whether the custom, practice, right or privilege arose before, or arises after, the coming into force of this section.

Access procedures under other Acts
64(3) Without restricting the generality of subsection (1), nothing in this Act or the regulations affects any form, fee or procedure established by or under any other Act of the Legislature, or any regulation thereunder, for gaining access to any record referred to therein.

Act prevails over Schedules
64(4) Where there is a conflict between this Act and any access provision or access restriction contained in a Schedule prepared and approved under The Legislative Library Act, this Act prevails.

Confidentiality provisions in other enactments
65 Every provision in any other Act of the Legislature or any regulation thereunder which restricts or prohibits access by any person to any record in the custody or under the control of a department is subject to this Act, and applies only to the extent that it falls within the exemptions in this Act.

par lequel toute personne, notamment un fonctionnaire agissant dans l'exercice de ses fonctions, est autorisée à obtenir la communication d'un document ou d'un groupe ou d'une catégorie de documents sous la garde ou la responsabilité d'un ministère.

Droits de communication et application du paragraphe (1)
64(2) Le paragraphe (1) s'applique, que les coutumes, les pratiques, les droits ou les privilèges aient pris naissance avant ou après l'entrée en vigueur du présent article.

Procédures de communication en vertu d'autres lois
64(3) Sans préjudice de la portée générale du paragraphe (1), aucune disposition de la présente loi ou des règlements ne porte atteinte aux formules, aux droits ou aux procédures, établis en vertu de toute autre loi de la Législature ou des règlements pris sous le régime d'une telle loi, relativement aux dispositions qui se rapportent à la communication d'un document.

Priorité de la présente loi sur les annexes
64(4) La présente loi prévaut, lorsqu'il y a incompatibilité entre celle-ci et toute disposition ou restriction qui concerne la communication d'un document et qui est contenue dans une annexe préparée et approuvée en vertu de la Loi sur la bibliothèque de la Législature.

Autres dispositions portant sur l'aspect confidentiel
65 Toute disposition qui est contenue dans une autre loi de la Législature ou dans les règlements pris sous le régime de cette loi et qui restreint ou interdit la communication à une personne d'un document sous la garde ou la responsabilité d'un ministère est soumise à la présente loi et ne s'applique que dans la mesure où elle est comprise dans les exemptions prévues à la présente loi.

Other enactments prevail

66 Without restricting the generality of subsection 64(1), and notwithstanding section 65, this Act does not apply to the right of access and the procedures for gaining access to records, and the restrictions on access to records, contained in the following provisions:

(a) The Child Welfare Act and any regulations thereunder, and any enactment which may be substituted therefor.

(b) Subsections 63(1) and (2) and section 64 of The Workers Compensation Act.

(c) Sections 31 to 33 of The Vital Statistics Act.

(d) Section 9 of The Statistics Act.

(e) The Securities Act.

S.M. 1988-89, c. 13, s. 12.

Transfer, storage or destruction

67 Nothing in this Act shall be interpreted to prohibit the transfer, storage or destruction of any record in accordance with any other Act of the Legislature or any regulation thereunder.

Reference in Continuing Consolidation

68 This Act may be referred to as chapter F175 of the Continuing Consolidation of the Statutes of Manitoba.

Commencement of Act

69 This Act comes into force on a day fixed by proclamation.

NOTE: This Act was proclaimed in force September 30, 1988. See Manitoba Gazette No. 35, August, 27, 1988, page 1,167.

Priorité d'autres textes législatifs

66 Sans préjudice de la portée générale du paragraphe 64(1) et par dérogation à l'article 65, la présente loi ne s'applique pas aux droits de communication et aux procédures relatives à l'obtention de la communication de documents ainsi qu'aux restrictions qui concernent la communication de documents et qui sont contenues dans les dispositions suivantes :

a) la Loi sur la protection de l'enfance, les règlements pris sous le régime de cette loi et tout texte législatif qui peut être substitué à cette loi;

b) les paragraphes 63(1) et (2) de la Loi sur les accidents du travail ainsi que l'article 64 de cette loi;

c) les articles 31 à 33 de la Loi sur les statistiques de l'état civil;

d) l'article 9 de la Loi sur la statistique;

e) la Loi sur les valeurs mobilières.

L.M. 1988-89, c. 13, art. 12.

Transfert, conservation ou destruction de documents

67 Aucune disposition de la présente loi ne doit être interprétée de façon à interdire le transfert, la conservation ou la destruction d'un document, conformément à toute autre loi de la Législature ou à tout règlement pris sous le régime de cette loi.

Codification permanente

68 La présente loi est le chapitre F175 de la Codification permanente des lois du Manitoba.

Entrée en vigueur

69 La présente loi entre en vigueur à la date fixée par proclamation.

REMARQUE : La présente loi est entrée en vigueur par proclamation le 30 septembre 1988 (voir la Gazette du Manitoba du 27 août 1988 [no 35], à la page 1,167).

The Queen's Printer
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